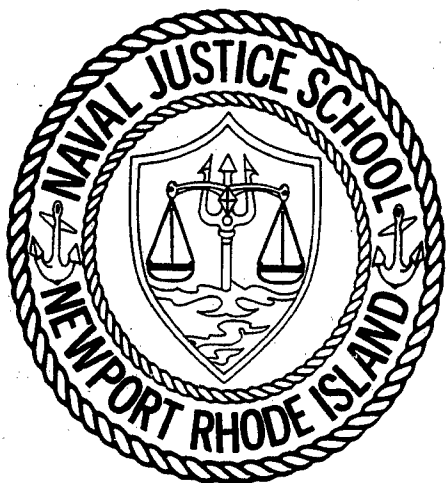


**A
Commander's
Quick
Reference
Manual
For Legal
Issues**



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January 1997

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NOTE FROM THE EDITORS

1. Guidance and / or comments in this pamphlet summarizes, rephrases, or explains many complex laws and regulations and is not controlling if in conflict with these. Commanders, Commanding Officers and Officers-in-Charge should encourage personnel at all levels to consult source documents for definitive guidance. Liaison with Judge Advocates, through the chain of command, is strongly encouraged.

2. None of the guidance and / or comments in this pamphlet is intended to contravene or supersede any provision of law or other order, directive, or issuance of competent authority.

3. The guidance and / or comments in this pamphlet create no right or benefit, substantive or procedural, enforceable at law against the United States, the Department of Defense, or the Department of the Navy.

SECTION I

PREVENTIVE MEASURES

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ALCOHOL ABUSE PREVENTION

- REFERENCES:**
- (a) OPNAVINST 5350.4 (series)
 - (b) SECNAV 5300.29 (series)
 - (c) MCO P5300.12
 - (d) ALNAV 080/96

DEGLAMORIZATION: Alcohol abuse is inconsistent with Navy initiatives to promote personal excellence among members. Alcohol abuse should not be promoted by the chain of command.

GENERAL RESPONSIBILITIES OF CO:

- Alcohol abuse information should be provided by a trained DAPA during indoctrination of newly reporting personnel.
- Document alcohol incidents by page 13 entries; evals; fitreps and other reports [drug and alcohol abuse reports (DAARs)] as required.
- Clearance eligibility incidents shall be referred to DONCAF.
- Review the status of members involved in alcohol abuse incidents and take appropriate disciplinary, remedial, educational and / or administrative action and make a final report to DONCAF. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*.
- Ensure that breathalyzer and / or field sobriety tests are conducted by base security when there is reasonable suspicion of alcohol abuse. Additionally, institute a random gate inspection program. See *SEARCH AND SEIZURE*.
- Consult with medical and alcohol abuse program personnel when there is a suspected problem.
- Conduct screening for overseas assignment to ensure members with unresolved alcohol incidents are not considered for overseas duty.
- Monitor aftercare of members who have completed Level II or Level III treatment programs. Members may be processed for ADSEP by reason of alcohol rehabilitation failure for any alcohol related misconduct at any time in their career after completing either program. See *ADMINISTRATIVE SEPARATIONS*.

* Reference (d) requires service record documentation of all substantiated drunk driving offenses.

(Continued on next page)

PREVENTION:

- Conduct regular command training on alcohol abuse.
- Ensure club personnel are trained not to serve intoxicated individuals.
- Institute and promote a designated driver / MWR taxi program at base clubs.
- Suspend base driving privileges for alcohol related driving incidents.
- Promote firm and equal treatment of alcohol abusers through NJP, Court-Martial or administrative means.
- Publish DAPA notes in POW.

DOMESTIC ABUSE PREVENTION

REFERENCES:

- (a) SECNAVINST 1752.3 (series)
- (b) OPNAVINST 1752.1 (series)
- (c) OPNAVINST 1752.2 (series)
- (d) MCO P1752.3B

EDUCATION AND TRAINING FOR ALL HANDS: Regularly emphasize and discuss DON family violence policies that emphasize prevention; recognition; prompt notification and reporting; and the availability of responsive services.

- Publish and place on command bulletin boards information concerning victim services and family violence rehabilitative education and counseling.
- **EDUCATION AND TRAINING FOR SUPERVISORS:** Ensure that military and civilian supervisors are trained in identifying signs of abuse and FAP referral procedures.

PROACTIVE TEAM: Executive Officer, Command Master Chief, Installation Family Advocacy Officer (FAO), Senior Medical Officer, Chaplain, and Legal Advisor are all key players.

FAMILY PROGRAMS: Conduct activities that contribute to a healthy family life (e.g. family picnics, family career day, etc.).

DEGLAMORIZATION OF ALCOHOL.

CIVILIAN LIAISON: Installation COs must establish a cooperative relationship with appropriate civilian authorities to provide for reciprocal reporting of information and development of a community based approach to family violence. Memorandum's of Understanding (MOU's) are recommended.

DRUG PREVENTION AND URINALYSIS PROGRAM

REFERENCES:

- (a) OPNAVINST 5350.4 (series)
- (b) SECNAVINST 5300.28(series)
- (c) MCO P5300.12

TRAINING: Include and emphasize alcohol and drug education in the command indoctrination program. Conduct periodic drug abuse awareness education in GMT programs. Ensure all personnel understand the zero-tolerance policy and are aware of voluntary self-referral provisions of reference (a).

DETERRENCE AND DETECTION PROGRAMS:

- Gate / quarterdeck inspections of personnel and / or vehicles. CO should structure the inspection to leave no discretion to security personnel and to reasonably balance inconvenience to members and / or others attempting to enter or exit.
- Health and welfare inspections of messing and berthing areas, barracks, and work spaces.
- Use drug detection dogs (when available), in conjunction with inspections, searches, and personnel inspections throughout all command areas. If a dog alerts, a probable cause authorization should be requested. See *SEARCH & SEIZURE*.

URINALYSIS PROGRAMS:

- **COORDINATORS & OBSERVERS:** Must be designated in writing. Whenever possible assign officers or chief petty officers. Coordinators and observers should be tested separately and should never provide a sample in any urinalysis in which they participate.
- **ATTENTION TO DETAIL & SECURITY:** The entire collection process will be scrutinized in any court-martial. Admissibility of test results is dependent on a tight chain of custody and protection of samples after collection.

■ **TESTING GOAL:** 10 - 20 percent of the command each month. Random sampling of smaller numbers of personnel on a more frequent basis provides best results. It reduces the risk of predictability of command testing and raises the perceived risk of detection.

■ **Example:** Conduct a random urinalysis on Friday and then test the same people on Monday. Keep everyone honest.

24 HOUR UA & SUB-UNIT TESTING: Commands may establish policies to test all member returning from UAs longer than 24 hours as a sub-unit sweep. The policy should be in writing and enforced equally and consistently to all members returning from 24 (+) hour UAs.

"FAILURE TO GO": If a member cannot provide a sample or produce a sufficient amount, require the member to remain in a controlled area and drink fluids. If the member still cannot provide a sample, refer them to medical.

REFUSAL TO PROVIDE: A commissioned officer (but not CO, XO or LEGO) should give a direct order.

POSITIVE RESULTS: Message report from the NDSL is official notification of lab test results and constitutes authority to take administrative or disciplinary action. Use may be limited depending on the basis for testing. See *APPENDIX I* and *ADMINISTRATIVE DISCIPLINARY OPTIONS*. Read member 31 (b) rights and questions about the positive urinalysis.

OBTAINING EVIDENCE OF DRUG USE: see *SEARCH & SEIZURE -- DRUG CASES*.

EO PREVENTIVE MEASURES

REFERENCES:

- (a) GENADMIN/CINCLANTFLT/081600Z AUG 95
- (b) GENADMIN/CINCPACFLT/021721Z APR 95
- (c) OPNAVINST 3100.6
- (d) USMC *"Processing EO & EEO Complaints, A Commander's Handbook"*

EDUCATION AND TRAINING FOR ALL HANDS: Regularly emphasize and discuss the DON EO policies. Set the tone for the command environment on Equal Opportunity:

- Publish a command policy statement on EO.
- Utilize the POD / POW to promote the Navy's EO program.
- Periodically publish and place on command bulletin boards information concerning command EO / EEO counselors, a member's right to submit a formal or informal grievance and the availability of legal advice.
- Prominently display the grievance poster, "Navy Procedures for Processing Discrimination Complaints / Grievances for Military Personnel" (DD Form 1348).
- Ensure Navy Rights and Responsibilities workshops are conducted and attended.

EMPHASIZE POSITIVE ASPECTS OF EARLY REPORTING AND INFORMAL RESOLUTION.

PROACTIVE TEAM: Executive Officer, Command Master Chief, Equal Opportunity Specialist (EOPS), Command Managed Equal Opportunity Officer (CMEO), Command Assessment Team Members and Legal Advisor are all key players. Empower them and discuss the issues with them frequently.

COMMAND ASSESSMENT: Ensure the command assessment team (CAT) conducts the annual assessment. [see reference (a)].

FITREP / EVALS: Establish meaningful, measurable EO / EEO performance objectives for fitness reports and evaluations.

RECOGNITION: Provide special recognition or awards for units / personnel demonstrating superior accomplishments in EO / EEO.

ENVIRONMENTAL COMPLIANCE

- REFERENCES:**
- (a) Navy Regulations, 0832
 - (b) OPNAVINST 5090.1 (series)
 - (c) MCO 5090.2 (series)
 - (d) JAGMAN, Chapter XIII

PERSONAL INVOLVEMENT: The CO's personal attention and involvement in environmental compliance is essential in establishing the necessary environmental ethic.

TRAINING: Annual training should be given to all hands regarding the Navy's environmental compliance program. Specialized training may be required depending on duties assigned.

SUPPORT NETWORK: Numerous sources of information and support networks exist to assist Navy and Marine activities. These include "Regional Environmental Coordinators" (REC's), the Naval Facilities Engineering Command, and installation environmental program managers. Determine where support assets are located before environmental compliance issues arise.

ENVIRONMENTAL COMPLIANCE EVALUATIONS (ECE'S): Both shore and afloat units are required to conduct annual ECE's. See *reference (b)* for areas to be audited and for applicable checklists.

- For any deficiencies identified in the ECE, a POA&M must be developed in order to get into compliance.
- All ECE's and corrective measures taken should be documented and retained.

REPORTING: If the requirements of any environmental law cannot be achieved because of operational considerations, insufficient resources or other reason, the CO "shall report" to the next superior. See *reference (a)*.

- Many environmental regulations require that federal and \ or state authorities be notified in situations involving spills or other unauthorized releases of pollutants to the environment. If there are any questions over whether to report, or who to report to, contact the REC staff.

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NAVAL VESSELS: Strict control of vessel-generated waste discharges is required. OOD's and Department Heads should be familiar with Chapter 19 of reference (b) and the rules for what may and may not be placed over the side.

CONTACT WITH REGULATORS: Report any and all contact with federal or state environmental regulators to the REC staff. This is particularly important with respect to requests to access ships. If you receive any "Notice of Violation / Non-Compliance," process in accordance with Appendix B to reference (b), or Appendix D to reference (c).

FRATERNIZATION PREVENTION

- REFERENCES:**
- (a) OPNAVINST 5370.2 (series)
 - (b) Art. 1165, U.S. Navy Regulations, 1990
 - (c) UCMJ ARTICLE 134

EDUCATION AND TRAINING FOR ALL HANDS: Regularly emphasize and discuss the DON fraternization policy:

- Ensure personnel are attending the Navy Rights & Responsibility workshops upon reporting to the command.
- Ensure all hands are receiving annual training.
- Training should include examples of appropriate and prohibited personal relationships. (e.g. dating, cohabitation, sexual relationships, private business partnerships).

PROMULGATE A COMMAND "INTERPERSONAL RELATIONSHIP" / "DATING POLICY": A Judge Advocate should review prior to issuance. Examples of items that may be covered:

- Dating between crewmembers / personnel in the same workcenter or command. May strongly discourage but may not prohibit off duty relationships that are not otherwise prohibited as fraternization or sexual harassment (e.g. after hours dating between two E-2s in different workcenters).
- Intimate conduct / public displays of affection on board a ship / military installation or while in uniform.
- Male / Female counseling situations.
- Uniform inspection requirements when members of the opposite sex are involved.
- Appropriate civilian attire on board ships and military installations.
- Entering berthing areas / heads / personal living areas by male / female personnel of opposite sex.

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- Searches / Health and Welfare Inspections when members of the opposite sex are involved.
 - Appropriate language on board ships and military installations.

COMMAND ASSESSMENT: Ensure the command assessment team (CAT) conducts an annual assessment that includes fraternization. [see OPNAVINST 5354.1 (series)]

MULTI-SERVICE COMMAND: Must develop a policy consistent with the different service regulations and ensure all personnel within the command understand the policy.

See also *FRATERNIZATION INCIDENTS*

HAZING PREVENTION

REFERENCES: (a) NAVOP 027/94
(b) NAVADMIN 141/94

COMMAND POLICY: Must be regularly emphasized to all hands.

PREVENTION: Requires continuous education and awareness from khaki leadership. Use the definition and specific examples below. The listing is not all inclusive and other known examples should be added to the list.

HAZING DEFINITION: Any action taken without chain of command approval that subjects a shipmate to physical, mental or verbal abuse. Any act, including horseplay, that would even remotely subject a member to injury, ridicule or degradation. Any situation where a person assumes the authority to coerce a sailor to participate in cruel, humiliating, unsafe, or meaningless conduct. (NOTE: Whether an individual consents or volunteers is immaterial.)

SPECIFIC EXAMPLES THAT ARE CLEARLY PROHIBITED: "Tacking on" promotions or warfare pins; "blanket parties"; initiations that have not been approved and are unsupervised by the chain of command; handcuffing members to fixed or movable objects; taping or tying member's arms or legs; forced / non-consensual cutting or shaving of hair; forced or non-consensual removal of clothing; "red bellies"; placing or pouring a liquid substance or foreign substance (i.e. grease or shoe polish) on a person or their property; requiring a person to consume substances or food not normally prepared or suitable for consumption; sabotaging personal property of another to cause even minor injury or damage; any horseplay or minor assault upon the person of another; or any other act that could even remotely subject a person to injury, ridicule or degradation.

INITIATIONS AND SPECIAL CEREMONIES: Must be approved by the chain of command. Specific guidance is contained in reference (b):

- CO or his / her direct representative shall personally be involved in planning or execution.
 - Glamorization of alcohol and alcohol abuse by event participants and guests shall not be tolerated.
 - Sexually suggestive activities, props, costumes, skits, gags, or gifts are prohibited.
- (Continued on next page)*

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- Personal, ethnic and religious beliefs of those in attendance shall be respected.
 - There will be no coercion of Navy members to participate. Any participation by principals or guests shall be strictly voluntary.
 - Proper medical screening of participants (when appropriate) and compliance with applicable health, safety, and environmental regulations shall be part of event planning.

SEXUAL HARASSMENT PREVENTION

- REFERENCES:**
- (a) SECNAVINST 5300.26 (series)
 - (b) Commander's Handbook, For Prevention of Sexual Harassment
 - (c) NAVPERS 15620 Informal Resolution
 - (d) OPNAVINST 5300.9 (series)
 - (e) OPNAVINST 5354.1 (series)
 - (f) OPNAVINST 5354.5 (series)
 - (g) ARTICLE 1166, U.S. NAVY REGULATIONS 1990
 - (h) MCO P5354.1B
 - (i) USMC "Processing EO & EEO Complaints, A Commander's Handbook"

POSITIVE ENVIRONMENT: Create a command environment where sexual harassment is neither ignored nor condoned.

EDUCATION AND TRAINING FOR ALL HANDS: Regularly emphasize and discuss DON Sexual Harassment policies. Set the tone for the command environment:

- Publish a command policy statement outlining the command's stance on sexual harassment. Reference (b), appendix D contains a sample.
- Utilize the POD / POW to promote the Navy's zero tolerance sexual harassment policy. Appendix E of reference (b) contains sample provisions.
- Periodically publish and place on command bulletin boards information concerning command EO / EEO counselors, a member's right to submit a formal or informal grievance and the availability of legal advice.
- Prominently display the grievance poster, "Navy Procedures for Processing Discrimination Complaints / Grievances for Military Personnel" (DD Form 1348).
- Conduct Navy Rights and Responsibilities workshops for military personnel IAW reference (e).
- Conduct annual sexual harassment training IAW reference (d).

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PROMULGATE "INTERPERSONAL RELATIONSHIP" and / or "DATING POLICY": A Judge Advocate should review prior to issuance. Examples of items that may be covered:

- Intimate conduct / public displays of affection on board a ship / military installation or while in uniform.
- Male / Female counseling situations.
- Uniform inspection requirements when members of the opposite sex are involved.
- Appropriate civilian attire on board ships and military installations.
- Entering berthing areas / heads / personal living areas by male / female personnel of opposite sex.
- Searches / Health and Welfare Inspections when members of the opposite sex are involved.
- Appropriate language on board ships and military installations.
- See *FRATERNIZATION PREVENTION*.

EMPHASIZE POSITIVE ASPECTS OF EARLY REPORTING AND INFORMAL RESOLUTION: Encourage command use of the Informal Resolution System prior to the filing of a formal complaint. [See *reference (c)*].

PROACTIVE TEAM: Executive Officer, Command Master Chief, Equal Opportunity Specialist (EOPS), Command Managed Equal Opportunity Officer (CMEO), Command Assessment Team Members and Legal advisor are all key players. Empower them and discuss the issues with them frequently.

COMMAND ASSESSMENT: Ensure the command assessment team conducts the annual assessment to include sexual harassment issues. [See *reference (f)*].

FITREP / EVALS: Establish meaningful, measurable EO performance objectives for fitness reports and evaluations.

RECOGNITION: Provide special recognition or awards for units / personnel demonstrating superior accomplishments in EO.

SECTION II

ETHICS

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BEDROCK STANDARDS OF CONDUCT

REFERENCES: (a) DoD 5500.7-R (JER), Section 2-100

BASIC OBLIGATIONS OF PUBLIC SERVICE

- Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
- Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- An employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- Employees shall put forth honest effort in the performance of their duties.
- Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
- Employees shall not use public office for private gain.
- Employees shall act impartially and not give preferential treatment to any private organization or individual.
- Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

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- Employees shall satisfy in good faith their obligation as citizens, including all just financial obligations, especially those -- such as Federal, State, or local taxes -- that are imposed by law.
 - Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
 - Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the standards of conduct.

COMMERCIAL DEALINGS BETWEEN MEMBERS

REFERENCES: (a) DoD 5500.7-R (JER), Section 5-409

SENIOR TO JUNIOR: On or off duty, a military member cannot solicit or sell to personnel who are junior in rank, grade or position, or to the family members of such personnel. Included in this prohibition are sales of insurance, stocks, mutual funds, cosmetics, household supplies, vitamins, real estate or any other goods or services.

EXCEPTIONS:

- Absent coercion/intimidation, the sale or lease of non-commercial personal or real property and commercial sales solicited and made in a retail establishment during off-duty employment are not prohibited.
- Sales made because a junior approaches the senior and requests the sale to be made are not prohibited, absent coercion/intimidation.

SPOUSES/OTHER HOUSEHOLD MEMBER: Must seek opinion of Ethics Counselor (SJA) if spouse or household member is soliciting sales to junior personnel or their families. The member should be counseled that such sales activities are to be avoided where it may cause actual or perceived partiality or unfairness, involve the actual or apparent use of rank/position for personal gain, or otherwise undermine discipline, morale, or authority.

CONFLICTS OF INTEREST

REFERENCES: (a) 18 U.S.C. 208
(b) DoD 5500.7-R (JER), Section 2-100

OFFICIAL ACTIONS THAT HAVE A DIRECT AND PREDICTABLE EFFECT ON PRIVATE FINANCIAL INTERESTS: Officer and enlisted members are prohibited from participating personally and substantially in an official capacity in any particular matter in which he/she (or any person whose interests are imputed to him/her) has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

IMPUTED INTERESTS: The interests of a spouse, child, general partner, organization in which the employee serves (i.e. as a director or trustee), or anyone with whom the employee is seeking or negotiating future employment.

WHEN A CONFLICT EXISTS OR MAY (EVEN REMOTELY) EXIST:

- Seek the opinion of an Ethics Counselor (SJA).
- Disqualify and do not participate or take further action on the matter.
- Provide written notice of the particular conflict to superior.
- Request a waiver, disqualification, reassignment or limitation of duties.

PUBLIC FINANCIAL DISCLOSURE REPORT (SF-278): All officers O-7 and above must file:

- When promoted, annually thereafter, and upon termination.
- Ensure it is reviewed by an Ethics Counselor for potential conflicts of interest.
- Ensure any necessary remediation is made for conflicts disclosed.
- This document is available to the public.

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CONFIDENTIAL FINANCIAL DISCLOSURE REPORT (SF-450): All CO's and XO's of Navy shore installations with greater than 500 military and civilian personnel and any person whose official responsibilities require personal and substantial participation in contracting or procurement must file:

- Upon assuming the covered position and annually thereafter.
- Reviewed by Ethics Counselor (SJA) for conflicts and remediation if necessary.
- Information is kept confidential.

JOB HUNTING: When seeking outside employment the employee must disqualify himself/herself from any official action which could possibly affect the financial interests of the prospective employer.

- Disqualification must be in writing and sent to employee's supervisor.
- Can be reinstated when either party rejects possible employment.

FUNDRAISING

- REFERENCES:**
- (a) DoD 5500.7-R (JER), Sections 3-210 and 3-211
 - (b) SECNAVINST 5720.44 (series)
 - (c) DoD Dir 5035.1 (series)

OFFICIAL ENDORSEMENT: Commands may officially endorse fundraising efforts of the Combined Federal Campaign, the Navy-Marine Corps Relief Society, and emergency/disaster relief appeals approved by the Office of Personnel Management (OPM). Additionally, organizations composed primarily of DoD employees or their dependents may receive official endorsement.

OFFICIAL SUPPORT: Commands may officially support (vice endorse) a charitable fundraising event sponsored by a non-Federal entity when certain criteria are met. Such support is limited to logistical support (i.e., use of DoD facilities and equipment on a limited basis).

WORKSPACE SOLICITATIONS: Only for approved organizations with an official endorsement. Solicitations must be conducted in such a way as to ensure all contributions are voluntary. Coercive practices listed below are prohibited:

- Solicitation by supervisors.
- Setting 100 percent participation goals, mandatory personal goals or quotas.
- Using contributor or non-contributor lists for any purpose other than routine collection and forwarding of pledges.
- Counseling or grading of individuals based on their failure to contribute, or the size of their contribution.

FUND RAISING EVENTS ON NAVY INSTALLATIONS: Reference (b) authorizes CO's to allow limited fund-raising for:

- Military support organizations such as the USO or Spouse club;
- Local, community-wide programs such as volunteer fire companies, or youth groups; or
- Olympic and Pan American games.

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FUND RAISING BY PRIVATE ORGANIZATIONS AND/OR SPOUSE CLUBS:

Sales of merchandise or services is authorized, but should be limited to occasional sales, and not be frequent or continuous. Competition with Navy Resale activities should be minimized. Gambling and/or raffles and lotteries are prohibited. See *PRIVATE ORGANIZATIONS AND SPOUSE CLUBS* and *GAMBLING*.

RAFFLES: Authorized for Navy Relief.

BINGO: Authorized for MWR programs. See BUPERSINST 1710.11 (series) & BUPERSINST 1710.3 (series).

SOLICITING CONTRIBUTIONS FROM OUTSIDE SOURCES: (e.g., local merchants) Prohibited for any and all fundraising activities.

USE OF RANK OFFICIAL TITLE AND POSITION: May be used when conducting fundraising in official capacity for approved organizations. Only grade and military component may be used in connection with activities performed in personal capacity.

PERSONAL FUND RAISING ACTIVITIES: In a private capacity, charity work, to include fundraising is encouraged. The following are prohibited:

- Solicitations in the work place.
- Solicitation of subordinates.
- Solicitation of prohibited sources (See *GIFTS* for definition of prohibited source)

GAMBLING

- REFERENCES:**
- (a) DoD 5500.7-R (JER), Section 2-302
 - (b) BUPERSINST 1710.11 (series)

PROHIBITION: Gambling is prohibited while on duty or on federal property.

- Includes any game of chance, lotteries, raffles, drawings or office pools (e.g. Super Bowl or Final Four).
- Use of government resources to prepare or further such activities is also prohibited.

MWR BINGO AND NAVY RELIEF RAFFLES: Are permitted when conducted IAW applicable directives. See *FUNDRAISING*.

- Gambling activities by organizations composed primarily of DoD employees or their dependents may be permitted when approved by the Secretary of the Navy.

GAMBLING IN GOVERNMENT QUARTERS: Small wagers (e.g. card games, pools on sporting events), based on a personal relationship, transacted entirely within assigned government quarters (but not onboard ships) and not in violation of local law are permissible.

- Participants may not engage in such conduct or activities if it would violate Navy Regulation (Gambling with subordinates) or the Navy Fraternization Policy. See *FRATERNIZATION*.

GIFTS BETWEEN EMPLOYEES

REFERENCES: (a) DoD 5500.7-R (JER), Section 2-100 and 2-203

GENERAL RULE: A junior may not offer, give, make a donation, or solicit contributions for a gift to a senior in the same chain of command and the senior may not accept such a gift.

EXCEPTIONS TO THE GENERAL RULE:

- Token gifts of a nominal value (less than \$10.00) may be given on non-frequent, occasional basis (e.g., a junior may give a superior a bag of candy when returning from a vacation).
- Food and refreshments shared in the office.
- Reasonable personal hospitality at a residence or a gift in return for such hospitality (e.g. a junior could invite a superior to dinner).
- Special infrequent occasions such as child birth, marriage, retirement. Gift appropriate for the occasion may be given.

GROUP GIFTS: Authorized for special infrequent occasions (e.g. change of command or retirement). Total cost cannot exceed \$300/group or \$10.00/person. All contributions must be voluntary.

- Creative attempts to avoid the \$300 maximum should be avoided (e.g., an organization should not be divided into different components solely to avoid the \$300 maximum).

A SUPERIOR MAY NOT COERCE A SUBORDINATE TO CONTRIBUTE OR PROVIDE A GIFT.

GIFTS FROM OUTSIDE SOURCES

- REFERENCES:**
- (a) DoD 5500.7-R (JER), Section 2-100
 - (b) SECNAVINST 4001.2 (series)
 - (c) SECNAVINST 1650.1 (series)
 - (d) U.S. Constitution: Article I, Section 9, Clause 8

GENERAL RULE: Federal employees are forbidden from soliciting, coercing, or accepting: (1) gifts from a "prohibited source"; and/or (2) gifts because of the employee's official position. Gifts to family members or a designee are "imputed" to the employee.

"PROHIBITED SOURCES": Any entity or person who is seeking official action from a federal employee or a federal agency; is doing or seeking to do business with the agency; or is regulated or substantially effected by the agency.

DEFINITION OF "GIFT": Anything of monetary value. Items exempted from the definition, and therefore not considered gifts:

- Greeting cards.
- Modest refreshments which are not offered as part of a meal (the "coffee and donut rule").
- Widely available discounts available to all military personnel.
- Prizes won in contests or events; including random drawings, which are open to the public.
- Items for which you pay fair market value (if you pay for it, it's not a gift).

COMMON EXCEPTIONS TO THE GENERAL RULE PROHIBITING ACCEPTANCE OF A GIFT: (In all cases, and especially with regard to the exceptions listed below, an employee is prohibited from requesting, soliciting or coercing a gift; allowing or creating the appearance of bribery or graft; or accepting gifts so frequently that it creates an appearance of impropriety.)

- Gifts worth less than \$20.00 per occasion. Cannot receive more than \$50.00 worth of gifts from any one source/calendar year.
- Gifts given because of a bona fide personal relationship.
- Awards for meritorious service. Must typically be non cash and worth less than \$200.00.
- Gifts based on outside employment (i.e., approved moonlighting job or due to a spouse's employment). *(Continued on next page)*

- Free attendance at an event where employee is speaking on behalf of agency.
- Free attendance at "widely attended gatherings" where attendance is deemed by a supervisor to be in the interests of the agency.

FOREIGN GIFTS: Gifts from foreign governments may be accepted if proper diplomacy requires.

- Gifts with a fair market value (FMV) less than \$225 may be kept by the employee.
- Gifts with a FMV over \$225 may be accepted on behalf of DON and processed IAW reference (c).

PROCUREMENT (CONTRACTING) OFFICIALS: Anyone in a procurement position or who has ultimate responsibility for procurement (e.g., COs) should see their Ethics Counselor (SJA) before accepting any gift.

NEVER ASSUME: Past practice or custom in an organization to accept certain gifts is not a defense. ASK THE ETHICS COUNSELOR (SJA).

CIVIL AND CRIMINAL PENALTIES EXIST FOR VIOLATIONS OF THESE RULES.

GOVERNMENT PROPERTY

REFERENCES: (a) DoD 5500.7-R (JER), Section 2-100 and 2-301

PREVENT MISUSE OF GOVERNMENT PROPERTY: Government property may not be utilized for private/personal purposes.

EXCEPTION: Limited personal use of Government resources may be permitted when:

- No adverse effect on performance of official duties;
- Use is of reasonable duration and frequency and use is during personal time;
- Serves a legitimate public interest;
- Does not reflect adversely on DoD or the command; and
- Creates no significant additional cost to DoD or the command.

PREVENT MISUSE OF GOVERNMENT TIME: While receiving pay, unless the member is in an authorized leave or liberty status, all hours should be dedicated to government work. Superiors cannot order junior personnel to perform personal tasks which benefit the superior (e.g., order to perform non-official "taxi" services for the CO's spouse).

AVOID "APPEARANCE" PROBLEMS: For both government property and time, members must not create the appearance of misuse/impropriety (e.g., using government vehicle at a "drive-thru" restaurant, even on official travel).

GOVERNMENT VEHICLES: May not be used to transport employees between their home and work. (31 USC 1344). TYCOM and local directives should be consulted for further definition of authorized and/or prohibited uses.

RENTAL VEHICLES: Where public transport is not available, rental cars may be used to obtain suitable meals, visit drug stores, barber shops, cleaning establishments and similar places required for sustenance, comfort or health. Frolics or purely scenic or recreational driving must be avoided. (JFTR U3415). See also *TRAVEL BENEFITS*.

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GOVERNMENT AIRCRAFT: Recent DOD guidelines on use of government aircraft and air travel state that official travel should normally be accomplished using commercial transportation. Use of MILAIR is a particularly sensitive area. Consult recent policy guidelines to ensure correct use. Deputy SECDEF memo "DOD Policy on the Use of Government Aircraft & Air Travel" dtd 01 Oct 95. See also *TRAVEL BENEFITS*.

GIGS OR BARGES: Should avoid the appearance of misuse. Any use in support of community relations, foreign relations, crew morale and/or recreation should be approved by the ISIC and/or Ethics Counselor (SJA).

HOTLINE COMPLAINTS / WHISTLEBLOWER PROTECTION ACT

REFERENCES: (a) SECNAVINST 5370.5 (series)
(b) SECNAVINST 5370.7 (series)

FRAUD, WASTE, AND ABUSE HOTLINE (1-800-424-9098): Navy IG is the "eyes and ears" of SECNAV, CNO and CMC.

- Echelon II Commanders are responsible for written internal procedures for processing hotline referrals at appropriate levels within chain of command.
- Mandatory requirement to post information on Navy/DoD Hotline programs on command bulletin boards, per reference (a).
- Encourage and support reporting of fraud, waste and abuse throughout all levels of command; military and civilian.

INVESTIGATION PROCEDURES: If command is tasked with conducting an investigation, CO must ensure standards of independence, completeness, timeliness and accountability are met.

- Assign impartial investigator, outside and independent of the operation specified in the complaint.
- Reports cannot raise unanswered questions.
- IG due date in tasking letter must be met.
- Take proportionate remedial measures in form of disciplinary administrative/educational action if needed to correct deficiency.
- Retain EVERYTHING (notes, papers, files) for 2 years.
- Use JAGMAN as a guide for investigation.
- Confidentiality of informant is a must.
- NO REPRISAL can ever be taken against a known/suspected informant.

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WHISTLEBLOWER PROTECTION ACT: Prohibits reprisal or taking or threatening to take any unfavorable personnel action, or withholding or threatening to withhold any favorable personnel action, because a member makes or prepares to make a lawful communication to a Member of Congress, an IG, or any other person designated by regulations or established administrative procedures for such communications. [10 U.S. Code 1034].

- Contents of reference (b) **MUST** be published on command bulletin boards.
- Violation of the Act is a crime punishable under the UCMJ and a basis for disciplinary action against civilian employees.

See *MENTAL HEALTH EVALUATIONS*.

OUTSIDE EMPLOYMENT

REFERENCES: (a) DoD 5500.7-R (JER), Sections 2-206 and 2-303
(b) MILPERSMAN 3420500

CO's MAY REQUIRE MEMBERS TO REQUEST APPROVAL: Command policy should be promulgated to ensure outside employment will not interfere or conflict with military duties. Case by case determinations should be made.

POTENTIAL CONFLICTS:

- Interference with official duties or time.
- Employment by a defense contractor (*see CONFLICTS OF INTEREST*).
- Appearances of impropriety.
- Dual compensation: Second salary paid from U.S. Treasury/ appropriated funds.
- Involvement in any matter in which the United States is an interested party or has a substantial interest.
- Employment which will detract from readiness or pose a security risk.
- Employment which prejudices good order and discipline or is service discrediting (*see COMMERCIAL DEALINGS BETWEEN MEMBERS*).

QUESTIONABLE SITUATIONS SHOULD BE DISCUSSED WITH AN ETHICS COUNSELOR (SJA).

PRIVATE ORGANIZATIONS AND SPOUSE CLUBS

- REFERENCES:**
- (a) DoD Inst 1000.10 (CREDIT UNIONS)
 - (b) DoD Inst 1000.11 (FINANCIAL INSTITUTIONS)
 - (c) DoD Inst 1000.12 (BANKING OFFICES)
 - (d) DoD Inst 1000.15 (PRIVATE ORGANIZATIONS)
 - (e) DoD Inst 7230.7 (USER CHARGES)
 - (f) DoD Inst 7600.6 (AUDIT OF NAFI'S)
 - (g) DoD Dir 1330.5 (RED CROSS)
 - (h) DoD Dir 1330.12 (USO)
 - (i) DoD Dir 1330.16 (UNITED SEAMEN'S SERVICE)
 - (j) DoD Dir 1426.1 (LABOR MANAGEMENT)
 - (k) SECNAVINST 5381.5 (FINANCIAL INSTITUTIONS)
 - (l) OPNAVINST 1700.7 (MWR PROGRAMS)
 - (m) OPNAVINST 1700.9 (CHILD DEVELOPMENT)
 - (n) SECNAVINST 4060.1 (NAFI RESALE ACTIVITIES)
 - (o) SECNAVINST 5720.44 (PUBLIC AFFAIRS)
 - (p) OPNAVINST 5760.2 (YOUTH ORGANIZATIONS)
 - (q) OPNAVINST 5760.5 (NAT'L YOUTH GROUPS)
 - (r) BUPERSINST 1700.21 (USO)
 - (s) BUPERSINST 1700.11 (RECREATION PROGRAM)
 - (t) JAGMAN 0629 & 0630
 - (u) NAVCOMPTMAN 075261
 - (v) MCO 1710.36
 - (w) MCO 1754.2

STATUS OF PRIVATE ORGANIZATIONS: Private organizations are not Federal agencies or NAFI's and are therefore not entitled to the same level of support. The nature and amount of support varies depending on the organization. Applicable regulations must be consulted to determine what level of support is authorized for any particular group.

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PRIVATE ORGANIZATIONS INCLUDE: Spouse Clubs; Boy Scouts; Girl Scouts; Sea Cadets, athletic clubs; local school organizations; command organizations and social funds (e.g. First Class Association or Chief's Messes).

NO DISCRIMINATION: Private organizations must be denied any support if they discriminate in membership practices based upon, race, sex, religion etc.

CREATION OF PRIVATE ORGANIZATION: Must have written approval from the installation CO to operate. Must have a constitution, by-laws, charter, or other authorization document approved by CO. Cannot state or imply sponsorship by DOD or DON, and should not use DOD, DON or other installation name or seal unless authorized.

PERIODIC REVIEW: Installations COs must conduct periodic reviews of all private organizations.

FUNDING AND SUPPORT: Private organizations are generally self-sustaining, primarily through dues, contributions, service charges, fees or special assessment of members. Limited fundraising activities conducted on the base may be permissible, under certain circumstances and controls. An ethics counselor (SJA) should be consulted.

- Minimal logistical support is authorized, dependent on the type of private organization and the authority under which it is organized.
- No direct financial support from a NAFI is allowed except as specifically authorized by SECNAV.
- Under certain circumstances, government resources may be used by private organizations on a "not to interfere" basis.

FUNDRAISING ON DOD PROPERTY: Sale of merchandise or services is authorized, but should be limited to occasional sales, and not be frequent or continuous. Competition with Navy Resale activities should be minimized. See *FUNDRAISING*.

TRAVEL BENEFITS

- REFERENCES:**
- (a) DoD 5500.7-R (JER), Chapter 4
 - (b) JOINT FEDERAL TRAVEL
REGULATIONS (JFTR)
 - (c) 31 U.S. Code 1353

ACCEPTING TRAVEL FROM A NON-FEDERAL SOURCE: Heads of DOD components (Commanding Officers and those who exercise command authority) may accept official travel from non-federal sources for attendance in an official capacity at a meeting or similar event. Acceptance must be approved in writing by the ISIC for the traveler and an Ethics Counselor (SJA) must be consulted.

INCIDENTAL BENEFITS: Unless an exception applies, any incidental benefit received as a result of official travel (e.g., frequent flyer miles) is the property of the U.S. Government.

FREQUENT FLYER MILES (FFMs):

- FFM's from official travel must be kept in a separate account from personal FFM's, or be easily identifiable if commingled.
- FFM's from official travel can only be used for future official travel (NEVER FOR PERSONAL TRAVEL).
- FFM's can be used on official travel for upgrades to business class, but not first class.

ON THE SPOT UP-GRADES: Cannot be solicited while on official travel, but can be accepted (even to first class, but never travel first class in uniform).

OVER-BOOKING: If involuntarily bumped you may not keep free tickets or any other benefit received for personal use. If voluntarily give up your seat and receive free tickets or another benefit, they may be kept for personal use. [Note: volunteering may not result in an increase of expense to the government; per diem and the additional time may not be charged or received on your travel claim].

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GOLD CARDS AND SIMILAR MEMBERSHIPS: Any benefits accrued due from the use of a personal credit card or other club membership not related to official DOD position, may be kept for personal use by the member when used in connection with official travel (i.e., if personal credit card is used to rent a car while on official travel, the expense may be included on the travel claim, and any free FFM's earned by use of the card may be retained for personal use).

RENTAL VEHICLES: Where public transport is not available, rental cars may be used to obtain suitable meals, visit drug stores, barber shops, cleaning establishments and similar places required for sustenance, comfort or health. Frolics or purely scenic or recreational driving must be avoided. (JFTR U3415).

GOVERNMENT AIRCRAFT: Recent DOD guidelines on use of government aircraft and air travel state that official travel should normally be accomplished using commercial transportation. Use of MILAIR is a particularly sensitive area. Consult recent policy guidelines to ensure correct use. Deputy SECDEF memo "DOD Policy on the Use of Government Aircraft & Air Travel" dtd 01 Oct 95.

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MILITARY JUSTICE ISSUES

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NCIS REPORTING & MILITARY JUSTICE INVESTIGATIONS

REFERENCES: (a) Manual For Courts- Martial (RCM 303)

REPORT OF OFFENSES (COMPLAINTS): May come to command attention in variety of ways [e.g. shore patrol, MAA, Incident Complaint Report (ICR), civilian law enforcement, individual (civilian or military / in person or via phone or mail]. CO must investigate all complaints [see *reference (a)*]. Degree of investigation will depend on nature and seriousness of complaint.

MANDATORY REFERRAL TO NCIS PRIOR TO COMMAND INVESTIGATION: Major criminal offenses except those which are purely military in nature. "Major offense" is defined as any offense which carries more than one year confinement. Consult the Manual for Courts-Martial. (SECNAVINST 5520.3) Incidents of actual, suspected or alleged major criminal offenses must be immediately referred to NCIS whether occurring **on or off** an installation and **regardless of civilian investigative involvement**.

- Actual, potential, or suspected sabotage, espionage, subversive activities, or defections;
- Loss, compromise, leakage, unauthorized disclosure, or unauthorized attempts to obtain classified information;
- National security cases. (see *also* JAGMAN 0126);
- Incidents involving ordnance;
- Incidents of perversion;
- Damage to government property which appears to be the result of arson or other deliberate attempt;
- Fire or explosion of questionable origin affecting military property;
- Incidents involving narcotics, dangerous drugs or controlled substances (Note: NCIS may decline to investigate user amounts or positive urinalysis but **MUST** still be notified of the incident);
- All thefts of government property;

- Thefts of personal property over \$500.00 or series of unresolved minor thefts that affect morale and discipline;
- (Continued on next page)*
- Deaths on military property when criminal causality cannot be firmly excluded.

WHEN NCIS DECLINES AN INVESTIGATION: NCIS may decline any investigation which in their judgment would be fruitless or unproductive. A command may then pursue a command investigation (e.g. one officer / CPO / Petty Officer; disciplinary review board; XO; or JAGMAN) or request assistance from the Security Department Criminal Investigation Department (CID).

ADMINISTRATIVE & DISCIPLINARY OPTIONS

- REFERENCES:**
- (a) Manual for Courts-Martial (RCM 306)
 - (b) MCO P1610.7
 - (c) MCO 5510.7F

APPROPRIATE ACTION IN EVERY CASE: "The disposition decision is one of the most important and difficult decisions facing a commander." RCM 306 lists 10 factors that the commander should consider. (e.g. character of accused's military service; nature of the incident; victim and witness availability, etc.). Prompt action is always essential.

NO ACTION OR DISMISSAL: Pertinent facts and decisions should be appropriately documented and preserved for future reference.

ADMINISTRATIVE ACTION: May be taken in addition to or instead of disciplinary action as circumstances warrant. Administrative action will not preclude further disciplinary action.

TYPES OF ADMINISTRATIVE ACTION:

- Informal Resolution System for minor sexual harassment incidents or very minor misconduct.
- See *NONPUNITIVE MEASURES*. Leadership tools to correct unacceptable behavior.
 - Counseling.
 - Nonpunitive letter of caution. JAGMAN 0105.
 - Extra Military Instruction. JAGMAN 0103 & OPNAVINST 3120.32.
 - Denial of Privileges. JAGMAN 0104.
- Letter of Instruction (LOI). MILPERSMAN 3410105.
- FITREP and EVALS. BUPERSINST 1610.10, MCO P1610.7
- Security clearance / PRP adjustment or withdrawal. OPNAVINST 5510.1, 5510.7F.
- Withhold or withdraw advancement / promotion recommendation.

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- Reassignment / Early transfer / Delay of transfer.
 - See *DETACHMENT FOR CAUSE* (DFC). (MILPERSMAN 3410105, 3420260)
 - See *ADMIN SEPARATION*.

TYPES OF DISCIPLINARY ACTION:

- See *NONJUDICIAL PUNISHMENT*
- SUMMARY COURTS-MARTIAL (SCM)
- SPECIAL COURTS-MARTIAL (SPCM)
- GENERAL COURTS-MARTIAL (GCM)

SEE: *COURTS-MARTIAL*

NONPUNITIVE MEASURES

REFERENCES: (a) JAGMAN 0102, 0103, 0104
(b) OPNAVINST 3120.32 (Section 140-142)

PURPOSE: Correct minor infractions and deficiencies without permanent record.

FUNCTION: A leadership tool for teaching and training instead of punishment. Under UCMJ, **punishment** may only be given as a result of NJP or Court-Martial.

CENSURE (JAGMAN 0102): Two types:

- Oral: Chewing out
- Written: "Nonpunitive Letter of Caution" or counseling chit.
Limitations: Private (one copy). Not mentioned in evals / FITREPs. (Underlying CONDUCT may be mentioned)

EXTRA MILITARY INSTRUCTION (EMI) (JAGMAN 0103). Command obligation to have policy and ensure EMI not abused.

EMI ANALYSIS:

- Identify the deficiency.
- Assign corrective instruction logically related to deficiency.
- Recommend order be given in writing.

WHO MAY ASSIGN EMI?

- EMI completed during working hours - - officers / CPOs / POs / NCOs.
- EMI completed after working hours - - COs may delegate to commissioned officers and senior enlisted.

LIMITATIONS ON EMI:

- Two hours maximum per day. (general guideline).
- Not on Sabbath.
- Reasonable number of days.
- Normal liberty upon completion
- No entry in service record. *(Continued on next page)*

ADMINISTRATIVE WITHHOLDING OF PRIVILEGES (JAGMAN 0104). Power to grant equals power to revoke. Distinguish "privileges" from "rights" which cannot be Administratively withheld.

- Part of compensation or required for the performance of duties (e.g., medical care, dental care, quarters, subsistence, pay, normal liberty).
- Privilege: A benefit for the member's enjoyment (e.g., special liberty, driving on base, civilian clothing, exchange of duty, use of base theater, club).

LAWFUL WAYS TO DENY NORMAL LIBERTY:

- EMI
- Extension of working hours for mission requirements.
- Limited health / safety reasons (i.e., immunization, vaccination, and family advocacy 72-hour cooling-off period).
- See *LIBERTY RISK*.
- Punishment awarded at NJP.
- Pretrial restraint for courts-martial. See *COURTS-MARTIAL--PRETRIAL RESTRAINT*.
- Punishment awarded at NJP or Court-martial.

"VOLUNTARY RESTRAINT" (HACK): Not authorized.

REMEDIES FOR ILLEGAL NONPUNITIVE MEASURES:

- Request mast.
- Article 138 (UCMJ) complaint against CO.
- Article 1150 (NAVREGS) complaint against superior.
- Congressional inquiry / Hotline complaint.

NJP JURISDICTION

REFERENCES: (a) Manual For Courts-Martial: Part V
(b) JAGMAN Chapter I

CO's AUTHORITY NON-DELEGABLE: Authority to impose NJP is normally *not* delegable. Exception for Admirals who may designate a principal assistant (JAGMAN 0106). CO of a unit has authority over:

- All military members of the command.
- Member of command at the time NJP is imposed, *not* at the time of the offense.
- See *TAD Personnel*: Either PCS or TAD CO can impose but not both.
- See *Embarked units*: Unit commanders defer to the CO of the ship. Except unit embarked for transportation only -- unit commander retains NJP authority (generally).
- See *Multi-service command*: Change 2 to the JAGMAN provides that Navy personnel are subject to NJP from multi-service commander.

OFFENSES PUNISHABLE: CO has broad discretion to decide what offenses should be handled at NJP.

- GENERAL GUIDANCE: NJP is for "minor" offenses. An offense is "minor" if a dishonorable discharge (DD) or over one year's confinement is *not* authorized.
- "DOUBLE PUNISHMENT": Punishment of a minor offense at NJP will bar a subsequent court-martial for the same offense. Major offense -- punishment at NJP will not bar a subsequent court-martial for the same offense, but accused will receive credit for NJP against the court-martial sentence. Military judge (MJ) will decide if offense is major or minor.

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PRIOR CIVILIAN ACTION (JAGMAN 0124): Prior federal court action bars NJP or court-martial. Prior State / local / foreign court action does not bar NJP or court-martial, but must request permission to proceed.

- For GCM / SPCM -- OJAG permission.
- For NJP / SCM -- GCMCA permission.
- Criteria -- exceptionally light sentence, impracticable probation, court concludes without conviction or acquittal after trial on the merits, unique military interest.

RACE TO THE COURT HOUSE: If both the Navy and a civilian law enforcement agency have jurisdiction over an offense, prosecution efforts should be coordinated. SOPA and the area coordinator SJA, as well as NCIS should be consulted if it appears that both the Navy and local authorities are contemplating prosecution.

STATUTE OF LIMITATIONS: Two years from date offense.

NJP -- PRE-MAST & MAST PROCEEDINGS

- REFERENCES:**
- (a) Manual For Courts-Martial: Part V
 - (b) JAGMAN Chapter I
 - (c) MCO P5800.8 Chapter 2

XOI: An investigative tool that is not required, but may be conducted in order to screen cases for the CO. Member cannot refuse XOI. XO may not impose punishment but may take administrative measures. See *APPENDIX H: XOI PROCEEDINGS* and *ADMINISTRATIVE & DISCIPLINARY OPTIONS*. (USN ONLY)

RIGHT TO REFUSE NJP

- Only when ***not*** attached to or embarked on a vessel.
- Right includes opportunity to consult with counsel before deciding whether or not to refuse NJP.
- Right expires when punishment is imposed.
- Right to refuse NJP. If member refuses CO decides if case will be handled at court-martial or with administrative measures. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*.
- "Golden Rule"- Never push a case to NJP that could not be proved at court-martial.

CO SCRIPT OR GUIDE FOR NJP: [JAGMAN, Appendix A-1-(E)(1)]. TYCOM regulations have rules on conducting NJP on CCTV.

MEMBER'S RIGHTS AT THE HEARING:

- To be present. Member may request to waive personal appearance, but CO may require member to appear. May not hold NJP on member who goes UA or in absentia.
- To remain silent.
- To have a personal representative.
- To examine evidence.
- To present matters in defense or extenuation & mitigation.
- Appearance of "reasonably available" witnesses.
(No subpoena power over civilian witnesses.)
- To a public hearing. Member may request "closed mast." CO decision but CO should never go one-on-one.

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MILITARY RULES OF EVIDENCE: Do not apply (except privileges).

STANDARD OF PROOF: Preponderance of the evidence.

CO'S OPTIONS:

- Dismissal -- with or without warning;
- Dismissal and imposition of administrative / nonpunitive measures. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*;
- Impose authorized punishment. (See *APPENDIX A: NJP Punishment Chart*);
- Refer to a higher forum or superior CA;
- Postponement of action.

PUBLICATION OF NJP: (JAGMAN § 0115)

- Full publication allowed to military personnel within one month of the NJP.
- If there is civilian access to publication, name must be removed.
- Best course of action: Publish **only** paygrade, punishment and date of Mast/office hours

NJP -- CLEMENCY AND CORRECTIVE ACTION

REFERENCES:

- (a) Manual For Courts-Martial: Part V
- (b) JAGMAN Chapter I
- (c) MCO P5800.8 Chapter 2

AUTHORITIES:

- Imposing officer;
- Successor in command (temporary or permanent);
- Subsequent CO after transfer of member; or
- Appellate authority

FOUR MONTHS: All clemency or corrective action should normally occur w/in 4 months.

SET ASIDE: All rights, privileges, and property restored. Used to correct a clear injustice.

REMISSION: Cancel out unexecuted portions of punishment. End of current enlistment or discharge automatically remits unexecuted punishment. Member may not be retained beyond EAOS to serve NJP punishment.

MITIGATION: A reduction in either the quantity or quality of a punishment.

SUSPENSION: Punishment held in abeyance (probation). May suspend any type of punishment. Period of suspension -- no more than six months.

CONDITIONS OF SUSPENSION: Member cannot commit further violations of the UCMJ. Additional terms should be in writing. Must be lawful order capable of performance.

- Examples: Make restitution to a victim; to *not* enter certain establishments; to submit to searches; to conduct GMT; to successfully complete course of rehabilitation, etc.

VACATING SUSPENSIONS: If member violates terms of suspension or UCMJ. May be vacated by any authority competent to impose punishment:

- Member should be notified.
- Hearing should be conducted.

NJP -- APPEALS

REFERENCES:

- (a) Manual For Courts-Martial: Part V
- (b) JAGMAN Chapter I
- (c) MCO P5800.8 Chapter 2

REVIEWING AUTHORITY: Area coordinator or GCM authority (Flag officer).
USMC: immediate superior to imposing officer.

GROUND FOR APPEAL:

- Unjust: "Not guilty".
- Disproportionate: "Guilty but punishment too harsh or unfair."

TIME LIMIT:

- 5 calendar days from date of imposition of punishment;
- Extensions may be requested for good cause;
- Late appeals may be denied only by the appellate authority.

PROCEDURE:

- Appeal must be in writing;
- Via the officer who imposed NJP;
- Endorsement should include:
 - Statement of facts
 - Copies of documents / witness statements
 - Copy of report chit / unit punishment book (UPB)
 - Copy of member's SRB performance.

REQUEST FOR STAY OF RESTRAINT: Applies only to restriction, extra duties, bread and water. May be made in writing or verbally. If appellate authority fails to act within 5 days after timely appeal submitted, restraint punishment must be stayed until the appellate authority acts.

APPELLATE AUTHORITY'S ACTION: Standard of review is "abuse of discretion."

REFERRAL TO JUDGE ADVOCATE: Required if punishment was greater than O-3 or below CO could impose.

REHEARING: At any rehearing, the maximum punishment is limited to the punishment imposed at the original NJP.

COURTS - MARTIAL: BASICS

JUDICIOUS AND FAIR: Congress has entrusted Commanding Officers with responsibility to administer discipline. All COs should be vigilant to ensure all actions are consistent with the UCMJ.

INFORMED DECISIONS: Ensure that independent investigations are convened to disclose reliable facts.

AREAS OF UNLAWFUL COMMAND INFLUENCE TO AVOID:

PERSONAL INTEREST: COs with a "personal interest" (i.e. victim or witness) should not take any action on a case, and should forward the case to a superior in the chain of command FORAC.

PUBLIC OPINIONS: Do not express public opinions on innocence / guilt or appropriate punishment.

UNLAWFUL INFLUENCE: Do not order a subordinate commander to dispose of a case in a particular way. Each commander must exercise independent judgement.

INFLEXIBLE POLICY: Do not have an inflexible policy on disposition or punishment. Each case and each punishment must be decided based on its particular facts.

INFLUENCE ON MEMBERS: Do not select or remove court members in order to obtain a particular result.

INFLUENCE ON MILITARY JUDGE: Do not attempt or even create the appearance of putting pressure on a military judge or court members to obtain a particular result.

INFLUENCE ON WITNESSES: Witnesses may not be discouraged or intimidated from testifying.

PRETRIAL PUNISHMENTS: Courts decide the punishment. An accused may not be punished before trial. Legitimate pre-trial restraint is not punishment.

THE STANDARD: "Would the average American citizen lose faith in the Military Justice system or consider it unfair?" Ensure that an accused member receives all the protection provided under the UCMJ.

COURTS-MARTIAL: TYPES & CONVENING

REFERENCES: (a) Manual For Courts-Martial
(b) JAGMAN Chapter I

TYPES OF COURTS-MARTIAL:

SUMMARY COURT-MARTIAL (SCM):

- Commanding Officers may convene.
- Cannot try officers.
- Enlisted have absolute right to refuse.
- One officer O-3 or above as SCM Officer.
- Punishment is limited. See *APPENDIX C*.
- CO approves findings & punishment after 7 days.

SPECIAL COURT-MARTIAL (SPCM):

- Commanding Officers may convene.
- Full criminal trial for officer and enlisted.
- See *APPENDIX C* for punishments.
- Convicted Officer may not be discharged.
- CO approves any pre-trial agreement.
- CO approves findings & sentence.

GENERAL COURT-MARTIAL (GCM):

- Article 32 investigation required. SPCM Commanding Officer may convene Art 32.
- Only flag officer (and a very few specially designated COs) may convene. (See JAGMAN 0120).
- Most serious type of court with authority to issue maximum punishments listed for each offense.
- Flag approves pre-trial agreement.
- Flag approves findings & sentence.

(Continued on next page)

CONVENING COURTS:

- **NONDELEGABLE:** Requires CO personal decision and action.
 - TSO should be consulted before preferral of charges because preferral will start a speedy trial clock.
- **SELECTION OF MEMBERS:** Officers should be appointed who are best qualified by reason of their age, education, training, experience, length of service, and judicial temperament. Any member with personal knowledge of the charges will be disqualified. Do not attempt to "stack" the jury. Members should ordinarily be senior to the accused. The accused is entitled to an impartial and fair panel. Enlisted members are only detailed after an enlisted accused requests enlisted members and must come from another unit (unless extraordinary circumstances).
- **MECHANICS:** Court created by convening order. Convening order must be created prior to CO signing the charge sheet. Contents:
 - Date.
 - Convening order number.
 - Authority to convene.
 - Type of court.
 - Names of members.
 - Personal signature of CO.
- **CO SIGNATURE:** Required on the charge sheet to refer charges to a court-martial. Be absolutely sure both a Convening order and Preferral block of the charge sheet (block 11) have been signed and dated **prior** to referring charges to Court-Martial.

COURTS-MARTIAL: PRETRIAL RESTRAINT (PTR)

PUNISHMENT BEFORE TRIAL IS PROHIBITED: PTR may only be used to ensure presence at trial and / or to prevent future serious misconduct.

DECISIONS FOR PTR: Must be made on a case-by-case basis. PTR may not be used for offenses that will be handled at NJP. PTR is for court-martial offenses only.

PTR STARTS SPEEDY TRIAL PROVISIONS: Immediately notify the local NLSO or TSO when a member is placed in PTR.

DEGREE OF PTR: The least severe form of PTR that is necessary under the circumstances should be used. PTR should not be more rigorous than the circumstances require.

THE 4 TYPES OF PTR (FROM LEAST SEVERE TO MOST SEVERE):

1. Conditions on liberty (Ex. Military Protective Order issued IAW family advocacy / domestic violence. See *VICTIM WITNESS ISSUES & FAMILY ADVOCACY*)
2. Restriction
3. Arrest
4. Pretrial Confinement (PTC)

AUTHORITY TO ORDER PTR: Only the CO may order PTR on an officer. Any commissioned officer may order PTR on any enlisted person but that individual's CO should be notified immediately.

USE OF PRETRIAL CONFINEMENT (PTC): Only for SPCM or GCM. May be imposed only when there is probable cause to believe:

- The prisoner will not appear at trial; or
- The prisoner will engage in future serious misconduct; and
- Less severe forms of restraint are deemed inadequate.

SUICIDAL OR INTOXICATED PRISONERS: PTC is not appropriate and brigs will not accept.

DOCUMENTING CO APPROVAL OF PTC: When PTC is imposed the CO must be notified and approve the PTC w/in 24 hours. A written memorandum justifying the PTC must be prepared and signed by the CO w/in 48 hours and forwarded to the brig.

COMMAND REPRESENTATIVE AT PTC HEARING: Within 7 days of confinement, an independent review officer (IRO) appointed by the area coordinator will conduct a hearing to review the reasons for confinement. The command should send a command representative to the hearing at the brig.

COMMAND VISITS: Prisoners in PTC should receive a weekly visit.

COURTS-MARTIAL: PRETRIAL AGREEMENTS

REFERENCES: (a) Manual For Courts-Martial
(b) JAGMAN Chapter I

NEED FOR PRETRIAL AGREEMENTS (PTA): PTAs serve both the government and the accused. In exchange for a plea of guilty and a limit on the authorized punishment, the government is often spared the expense (both monetary and man hour) of conducting lengthy trials (commands must fund the cost of a trial with OPTAR and witnesses and members are often unavailable to the command for days).

COs APPROVE ALL PTAs: PTAs are not entered into without the express consent of the CO. Trial counsel (prosecutors) may recommend but only COs may approve.

SCOPE OF A PRETRIAL AGREEMENT (PTA):

Accused may agree to:

- Plead guilty.
- Waive article 32 hearing.
- Waive members.
- Waive sentencing witnesses.
- A specific trial date.
- Stipulate to facts or testimony.
- Testify against others.
- Make restitution to a victim.
- Conform behavior to conditions of probation.
- Waive an ADMIN Board after trial.

CO may agree to:

- Lower forum court-martial.
- Drop or not proceed with certain charges.
- Protection on sentence provisions.

(Continued on next page)

NEGOTIATION PROCEDURES: Negotiations may originate with accused, DC, TC, SJA, CO. Proposals must be forwarded to the CO.

- Counter offers permissible.
- Agreement must be in writing.
- Must contain all aspects of agreement.
- Authority to sign may be delegated by CO.

WITHDRAWAL FROM THE PTA:

By the CO:

- Anytime before performance by the accused begins.
- If accused fails to fulfill a material condition.
- If MJ finds disagreement as to a material term.
- If findings are set aside on appeal.

By the accused: Anytime; but, after findings are announced, the accused can withdraw only with permission of the MJ.

DOD Authorization Act - Automatic Forfeitures

- Forfeitures may be automatic depending on sentence adjudged
- Defense counsel may ask for waiver (instead of automatically forfeiting all pay, it is paid directly to dependents) or deferral (no automatic forfeitures until CA acts) of the automatic forfeitures in the Pretrial Agreement.
- CO cannot **suspend** automatic forfeitures

COURTS-MARTIAL: REVIEW

- REFERENCES:**
- (a) Manual For Courts-Martial
 - (b) JAGMAN Chapter I
 - (c) DOD Authorization Act 1996

CA ACTION: Review of the court-martial by the Convening Authority after the trial. A crucial step in the courts-martial process that is often neglected and causes serious consequences.

EFFECTIVE DATE OF PUNISHMENT: Most punishments do not take effect until the CA takes his / her action. Exceptions are confinement which starts immediately and forfeitures of pay which start 14 days after trial. [See *reference (c)*]. Other punishments (e.g. reduction in rate, restriction, extra duty) will not go into effect until CA acts. Dismissal, DD and BCD will not take effect until case is reviewed on appeal which cannot take place until CA action.

WHEN CA MAY TAKE ACTION: Before the CA action the accused must be given the opportunity to submit matters and the record of trial must be completed by the NLSO. For cases involving a Dismissal, DD or BCD-- A Staff Judge Advocate (SJA) or Legal Officer must conduct a review (SJA reviews are preferred). Contact NLSO for assistance.

ATTENTION TO DETAIL: CA actions must include specific information about the accused and must accurately reflect information about the trial. Use of the standard language and forms in the MCM and JAGMAN is crucial.

FINDINGS OF THE COURT:

- CA not required to take any action
- CA may disapprove findings (i.e. change a guilty finding into a not guilty finding but not vice versa).

PUNISHMENT: CA must take action. Options:

- Approve all punishment as adjudged.
- Disapprove all or part of punishment.
- Mitigate (reduce) a punishment.
- Commute (change) a punishment but never increase.
- Approve as adjudged, but suspend all or part of punishment.

SUSPECTS-- QUESTIONING/ INTERROGATION/ ARTICLE 31(b)

MAJOR CRIMINAL OFFENSES: DO NOT allow anyone from your command to interrogate the member before referring the case to NCIS.

ALWAYS READ RIGHTS: Before questioning anyone suspected of committing any offense, you must give them rights warnings.

- Use the rights warning form at JAGMAN A-1-m. Do not ask the suspect any questions unless both the right to remain silent and the right to a lawyer are waived. If the suspect wants to remain silent or asks for a lawyer, you MUST NOT ask any more questions.

PRIOR QUESTIONING W/OUT RIGHTS WARNING: If someone has previously questioned the member and did not provide rights warnings, advise the member that the prior statement cannot be used against him / her, and that even though he / she made the earlier statement, he / she can still choose to remain silent or request a lawyer. Then fully advise the member of his / her rights using JAGMAN A-1-m and determine whether the member will waive his / her rights.

NEW OFFENSES: If during any conversation or questioning, you begin to suspect the member of a new or different offense, you must stop the questioning immediately and complete new rights warning form (JAGMAN A-1-m) with the new or different offense listed.

ARTICLE 31(b) & NJP: Rights warnings must be given at all stages in the process. Prior to any questioning by a supervisor, investigating officer, chief's disciplinary review board, XOI, and before appearing before the CO at Mast.

DRUNKEN SAILOR: A member must be in a condition to understand and voluntarily waive his / her rights. Don't try to interrogate a drunk sailor!

FALSE PROMISES OR THREATS: A confession must be voluntary. Don't use threats or false promises.

PROMISE OF LENIENCY: Only General Court-Martial Convening Authorities (Flag officers) have the authority to make deals or grant immunity or leniency for testifying. Do not promise a member that you won't use what he / she says against them, or that he / she won't be prosecuted.

SEARCH & SEIZURE

REFERENCES: (a) Manual For Courts-Martial: Military Rules Of Evidence (MRE)

CO AUTHORIZING A SEARCH MUST BE NEUTRAL AND DETACHED: If CO was the victim of an offense or has become involved in the investigation, refer any search authorization request to a superior in COC.

NON-DELEGABLE AUTHORITY: Only the CO can issue a search authorization. CO must personally make the probable cause determination (CDO must wake CO).

MAJOR CRIMINAL OFFENSES: DO NOT conduct a search before referring the case to NCIS unless the search is necessary to protect life or property, or to prevent the destruction of evidence.

SEARCH AUTHORIZATIONS MUST BE BASED ON PROBABLE CAUSE:

- A reasonable belief that a crime has been committed and that evidence of the crime will be located at the place to be searched.
- The reasonable belief must be supported by a factual basis and information must be reliable and credible.

ON BASE PROPERTY: With probable cause, a CO can authorize the search or seizure of any person (military or civilian) or property within his / her jurisdiction.

OFF BASE PROPERTY IN U.S.: CO may not authorize a search of off-base property in the United states. Must work through NCIS to obtain authority to conduct an off-base search.

OFF BASE PROPERTY OUTSIDE U.S.: CO with probable cause may authorize a search of a military member's off base property.

(Continued on next page)

QUEST FOR EVIDENCE: If looking (searching) for evidence, DO NOT order or conduct a "health and readiness inspection" in the area where the evidence may be located.

- Courts may throw out the evidence seized in an inspection if the inspection was not previously scheduled; if it followed the report of an offense; if it targeted specific individuals; or if it subjects specific individuals to a greater degree of scrutiny than others.

COMMON AREAS: May be searched anytime without a search authorization. Drug dogs may be used in passageways, work spaces or common areas at any time. Drug dog alert from w/in a common area may establish probable cause to order a search of private property (*i.e.*, private room or locker).

USE OF FORMS: Appendix A-1-n of the JAGMAN has the forms necessary for authorizing a search. Anyone providing information to support the request to search should be sworn and under oath. (See *APPENDIX B: CO Search Authorization Checklist*).

SPECIFICITY ON THE FORM: When authorizing a search, the CO must describe the place to be searched and the items to be seized. The list of items to be seized should include every item of evidence that may be expected to be found or any parts / pieces thereof.

ALWAYS ASK FOR CONSENT: Before actually conducting a search, the owner of the property should be asked for consent to search. Document consent in writing (see JAGMAN Appendix A-1-O).

SEARCH & SEIZURE -- DRUG CASES

- REFERENCES:**
- (a) OPNAVINST 5350.4 (series)
 - (b) SECNAVINST 5300.28(series)
 - (c) Manual for Courts-Martial, Military Rule Of Evidence (MRE) 313
 - (d) MCO P5300.12

INSPECTIONS: Commanders may order urinalysis inspections to determine and ensure the security, military fitness, safety, and good order and discipline of the command. Members may be selected randomly or Commanders may conduct unit or sub-unit sweeps. Results of inspections that follow reports of drug use by individuals w/in the command (which were not previously scheduled) and / or inspections that target specific individuals may be suppressed at a court-martial. Consult a JAG upon reports of drug use by members in the command.

- **24 HOUR UA & SUB-UNIT TESTING:** Commands may establish policies to test all member returning UAs greater than 24 hours as a sub-unit sweep. The policy should be in writing and enforced equally and consistently to all members returning from 24 hour UAs.

REPORT OF DRUG USAGE, POSSESSION or SUSPICION OF DRUG USE & PROBABLE CAUSE SEARCHES: Evidence obtained through probable cause (PC) searches will be admissible in disciplinary actions and may be used to characterize discharge. Must have reliable and credible information to establish PC. (Who witnessed the event and why should CO believe them?). See *SEARCH & SEIZURE* and *APPENDIX B: CO PROBABLE CAUSE CHECKLIST*.

- **ALWAYS ASK FOR CONSENT SEARCH:** Prior to conducting any search or ordering a member to provide a urine sample, the member should be asked to consent and the consent should be obtained in writing. Member should be advised that he / she may refuse. (required by ref (a)). Consent will negate subsequent challenge that the sample was seized illegally. See JAGMAN Appendix A-1-o.
- **OBSERVATION:** If you suspect a member is under the influence of a drug or alcohol, have medical or trained observer evaluate the member and opine whether the behavior indicates intoxication. Observation alone may establish PC. If PC does not exist, Commander may order a "Fitness for Duty", but results will be inadmissible in disciplinary action. (see Fitness for duty below & *APPENDIX I: Use Of Positive Urinalysis*).
(Continued on next page)

- **STALE COMPLAINTS:** If alleged use occurred several days before report, the information may be stale and therefore would not support a PC determination. Consent urinalysis may still be requested. Windows for detection:

- Marijuana 7 days
- Cocaine / Amphetamines / Methamphetamine 72 hours
- LSD / Morphine / Codeine 48 hours

- **FITNESS FOR DUTY TESTS:** May not be used for disciplinary purposes nor to assign an OTH. Includes command directed tests (ordered whenever a member's behavior, conduct, or involvement in an accident gives rise to suspicion of drug abuse and a urinalysis test has not been conducted on a consensual or probable cause basis), aftercare and surveillance testing, and safety investigation tests. See *APPENDIX I*.

DRUG PARAPHERNALIA: Reference (b) prohibits the wrongful possession of drug abuse paraphernalia which is defined as "all equipment, products, and materials of any kind that are used, intended for use or designed for use in injecting, ingesting, inhaling, or otherwise introducing into the body drugs, chemicals or other controlled substances in violation of the law." Enclosure (1) to reference (b) has a non-inclusive list. Paraphernalia discovered during authorized searches, inspections or that is in plain view may be seized.

SECTION IV

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ADMINISTRATIVE SEPARATIONS-- BASICS

REFERENCES:

- (a) SECNAVINST 1910.4 (series)
- (b) MILPERSMAN, Chapter 36
- (c) MARCORSEPMAN, Chapter 6

CNO CONCERN: Ensure expedited processing of ADSEP cases.

SEPARATION AUTHORITIES (SA): NAVY

- **NOTICE PROCEDURE USED:** Generally Special Court Martial convening authority (SPCMA), when General or Honorable discharge awarded (See Appendix J)
- **ADMINISTRATIVE BOARD PROCEDURE USED:** Generally General Court Martial Convening Authority (GCMA) if OTH awarded. If General awarded by Admin Board SPCMA can act as the SA (See appendix J)
 - **GCMA REVIEW:** In all cases where member is involuntarily separated by a SPCMA, member can request review of case by GCMA before separation is awarded.
- **BUPERS/ SECNAV SA:** Reservist or active duty personnel with 2 years of retirement: Best interest of the service cases: Homosexual conduct cases, members with 18 or more years service.
- **USMC:** For majority of separations, the GCM CA is the SA. CMC is SA in conscientious objector and homosexual conduct cases.

NOTICE vs ADMIN BOARD PROCEDURE

- Use notice procedure for all convenience of the Government cases, and for misconduct cases (except mandatory processing bases listed below) where convening authority feels discharge of General is warranted.
- Use admin board procedure for all homosexual conduct cases, mandatory processing bases, and other misconduct cases where CA feels OTH is warranted.
- **ADMIN BOARD:** Member is entitled to an admin board when OTH is authorized, or member has at least 6 years active service.

MANDATORY PROCESSING INCLUDES:

- Drug abuse, offenses involving death or serious bodily injury, sexual perversion, aggravated sexual harassment, homosexual conduct, supremacist or extremist conduct.

LEGAL REVIEW

- In cases where an OTH is recommended, or when a letter of deficiencies is submitted, the record must be reviewed by a Judge Advocate before the SA can act.

CONDITIONAL WAIVERS

- A respondent entitled to an Administrative Board may request a condition waiver of his right to a hearing, contingent upon receiving a General characterization of discharge.
- Approved by GCMA **only** if favorably endorsed by CA.

ENDORISING ADMIN BOARD CASES: If Admin Board recommends retention, CO may still recommend discharge to SA. As to characterization, CA can recommend a better discharge than the Admin Board, but not worse.

USN PAGE 13 (USMC 6105) IS EXTREMELY CRITICAL DOCUMENT: May be a prerequisite to ADSEP processing. Clear guidance on who may issue a pg. 13 should be promulgated. (Dept Head and / or legal advisor).

DEPLOYING UNITS: Prior to deployment pending ADSEP cases may be transferred to shore commands with JSSIC approval. Fleet Legal Manuals provide the format for requesting JAG services at sea.

OVERSEAS ADSEPS: Procedures should be in place to "escort" members to CONUS for discharge. Requires coordination with major overseas transient stations to ensure members are in appropriate Liberty Risk category and under appropriate supervision while in transit.

ADMIN LEAVE: Provisions allow for a member to request admin leave while awaiting discharge results. Ensure all processing requirements met before member departs.

FAMILY ADVOCACY CASES: Request servicing NLSO provide Recorder.

AVOID UNLAWFUL COMMAND INFLUENCE: See *COURTS-MARTIAL BASICS*.

SEE : *HOMOSEXUAL CONDUCT & MENTAL HEALTH EVALUATIONS*.

ADMINISTRATIVE SEPARATION BOARDS

REFERENCES: (a) MILPERSMAN, Chapter 36
(b) MARCORSEPMAN, Chapter 6

WITNESS REQUESTS: Must be timely. No subpoena power for civilian witnesses. CO may expend funds if live testimony is both necessary and outweighs the difficulties. The CO may consider such things as cost, delay, interference with mission in deciding whether to expend funds.

CONTINUANCE REQUESTS: Respondent should be given reasonable time in order to prepare for ADMIN board.

- Watch delay tactics with respect to upcoming EAOS.
- BUPERS Guidelines - for Admin Board case, members should be separated within 60 days after notification.
- If respondent goes UA while pending the board, may proceed in absentia.

CHALLENGES FOR CAUSE: May be made where Board Member cannot make a fair and impartial decision.

- Navy: CO rules on challenges.
- USMC: Non-challenged board members rule on challenge.

ISSUES FOR THE ADMIN BOARD:

- Basis supported by preponderance of evidence?
- If supported, should respondent be separated or retained?
- If separated, what should characterization of discharge be?

ADMIN BOARD EVIDENCE:

- Pre service / prior enlistment adverse matter - may **never** be considered on the issue of characterization. May only be considered on the issue of retention if not remote or isolated.
- Findings of Court Martial or civilian courts are binding upon subsequent administrative boards.

ADMIN BOARD COMPOSITION:

- 3 or more commissioned, warrant, or noncommissioned officers (E-7 and above)
- Majority must be commissioned officers
- Senior member must be O-4 or above (can be Line or Staff, Tar officers qualify)
- Reservist Respondent - only commissioned officers, at least one reservist.

SEE ALSO: ADMINISTRATIVE SEPARATIONS- BASICS
FREEDOM OF EXPRESSION
DOMESTIC VIOLENCE / FAMILY ADVOCACY INCIDENTS

AVOID UNLAWFUL COMMAND INFLUENCE; SEE COURTS-MARTIAL BASICS.

CLAIMS

REFERENCES:

- (a) JAGMAN, Chapter VIII
- (b) JAGMAN, Chapter XII
- (c) JAGMAN, Chapter II
- (d) JAGINST 5890.1 (series)

INVESTIGATION: If an incident occurs which gives rise to the possibility that a claim may be submitted either for or against the government, some form of admin investigation will be required in order to adjudicate or defend the claim. Typically, a JAGMAN investigation will be required.

- A "Litigation-Report Investigation" is appropriate whenever the "primary purpose" of the investigation is to defend the legal interests of the Navy.
- Consult the "cognizant judge advocate" before convening a "Litigation-Report Investigation" or if you have questions.

NLSO NOTIFICATION: The servicing NLSO should be notified of any incident which might result in a claim.

CLAIM RECEIPT: Should the command receive an actual claim, it must be date stamped and the original forwarded immediately to the servicing NLSO.

ADVANCE COPY OF INVESTIGATION: Provide NLSO with an advance copy.

NOTIFICATION OF LAWSUIT: If a lawsuit has been filed against an individual w/in the command, the command or the DON, immediately notify the servicing NLSO and OJAG, Code 35, at DSN 221-9880, (703) 325-9880.

ADMIRALTY INCIDENTS: Any claim that may arise from the operation of a vessel upon navigable waters is considered an admiralty incident. Every admiralty incident must be reported immediately to OJAG (Code 31) at DSN 221-9744, (703) 325-9744. *See reference (b).*

FOREIGN CLAIMS: Before foreign port calls, an officer should be appointed as the Foreign Claims Officer (unless already provided for the Battle Group). The Foreign Claims Officer must familiarize him / herself with ref (a) and ensure proper procedures are followed. *See FOREIGN CLAIMS.*

CLASSIFIED MATERIAL

REFERENCES:

- (a) OPNAV 5510.1 (series)
- (b) JAGMAN CHAPTER II (change 2)
- (c) MCO 5510.15

REPORTING: Upon loss or compromise of classified material, determine necessity of immediate OPREP / SITREP. Include CNO (NO9N) as info addressee.

NOTIFY NCIS IMMEDIATELY: See *NCIS REPORTING*.

SIOP MATERIAL: If any portion of any Single Integrated Operational Plan is involved, inform JCS (J-5) and N65 by quickest means possible, consistent with security requirements.

SCI VIOLATIONS: Additional reporting and investigation requirements contained in the "SCI Security Manual" C5105.21-M1.

COMSEC MATERIAL: Additional reporting and investigation requirements contained in CMS-4L, "COMSEC Security Manual."

PRELIMINARY INVESTIGATION: Initiate a command preliminary inquiry (PI). The PI must be completed within 72 hours and should not be delayed pending NCIS investigation, unless NCIS has specifically requested that command action be held in abeyance.

FINAL PI: Must be sent to the original classification authority (OCA), the originator of the material, next superior in the chain of command, NO9N, Director NCIS, and the local NCIS office. Message format and requirements are contained in reference (a).

FOLLOW UP ACTION: If PI concludes "no further action necessary" and ISIC concurs, a Security Violation Notice or other administrative action may be the only further action required. In all other cases, initiate a JAGMAN investigation in the form of "command investigation." Ultimate addressee on the JAGMAN should be CNO (NO9N). See *JAGMAN INVESTIGATIONS*.

ADMINISTRATIVE or DISCIPLINARY ACTION: After a loss or compromise or under any circumstances where disciplinary action involving classified material may be initiated against military or civilian personnel, liaison with the Staff Judge Advocate of one of the officers designated in JAGMAN 0126 is required. ONLY the officers designated in JAGMAN 0126 have authority to dispose of offense involving national security.

DOWNGRADING CLEARANCES: Chapter 22A of reference (a) discusses criteria.

CONGRESSIONAL INQUIRIES

REFERENCES:

- (a) MILPERSMAN 5410120
- (b) SECNAVINST 5216.5 (series)
- (c) Navy Regulations, Article 1155
- (d) MCO 52116.11C

RIGHT TO COMMUNICATE: No person may restrict any member from communicating with Congress in the member's personal or private capacity.

PROTECTION FOR "WHISTLEBLOWERS": No reprisal may be taken against a member who reports a perceived wrong to a member of Congress. [See SECNAV 5370.7 (series)].

PSYCHIATRIC EVALUATION: Do not refer a member for a mental health evaluation for initiating a Congressional Inquiry as reprisal. Must comply with requirements of mental health evaluation instruction. (See *MENTAL HEALTH EVALUATION*).

PRIVACY ACT CONCERN: Ensure that any personal information about a member included in the response is releasable information. Obtain the member's written consent before disclosing personal information unless the Congressperson is making the request on behalf of the member as a constituent.

CORRESPONDENCE:

- Each Congressional should receive a prompt, courteous, and complete reply.
- The reply should be correct even though the nature of the reply may be unfavorable.
- A final or interim reply must be sent within five workdays of receipt.
- The final reply and substantive interim replies are sent to (Pers-3C) with blind copies to the Office of Legislative Affairs.

INFORMING CHAIN OF COMMAND: Check TYCOM instructions for reporting requirements and requirements for providing copies of responses.

CUSTOMS

- REFERENCES:**
- (a) JAGMAN Chapter XI
 - (b) OPNAVINST 5840.2 (series)
 - (c) U.S. Navy Regulations Article 0860
 - (d) OPNAVINST 3120.3 (series)

PRIOR TO DEPLOYMENT: Ensure adequate number of personnel are trained to act as military custom inspectors and adequate supply of forms are onboard.

CO RESPONSIBILITIES FOR SHIP ARRIVAL:

- Must notify Customs District Director upon return to U.S. customs territory at port of first entry.
- Must facilitate customs and immigration inspection and ensure proper immigration clearance for any military or civilian passenger.
- Must distribute customs declarations to all passengers and crew.
- Must file a cargo declaration w/in 48 hours if carrying anything other than U.S property and passengers on official business.

AIRCRAFT COMMANDER RESPONSIBILITIES FOR ARRIVAL:

- Upon entering U.S. customs territory provide advance notice to Customs District Director at place of first landing.
- Notification may be made by radio, telephone, or other direct means; or through FAA flight notification procedures.
- Must distribute declarations to all passengers and crew and facilitate inspection.

DEATH INVESTIGATIONS

REFERENCES:

- (a) JAGMAN, 0234-0241
- (b) MILPERSMAN 4210100
- (c) SECNAVINST 5520.3 (series)
- (d) MCO P5800.8

PERSONNEL CASUALTY REPORT: Required in the event of the death of a member. See reference (a) and (b).

NCIS NOTIFICATION: Must be made if there is actual or suspected criminal conduct.

JAGMAN INVESTIGATION:

- If death occurred in CONUS, off-base, while the member was off-duty, and there is no connection between the naval service and the circumstances of death, the command may simply obtain the investigation done by civilian authorities and maintain the record as an internal report.
- All other circumstances, a full JAGMAN (typically a Command Investigation) is required.

STATUS OF INVESTIGATION REPORTS (SIR'S): Required every 14 days until the JAGMAN investigation is forwarded to the next reviewing authority. See reference (b).

LINE OF DUTY DETERMINATIONS: Opinions on the member's line of duty status and / or opinions on the member's misconduct, shall not be made in a death case.

INDEPENDENT REVIEWS: If the deceased's conduct is called into question, the CA may appoint an individual not associated with the case to review the investigation from the perspective of the deceased, to ensure thoroughness and accuracy of the findings.

FORWARDING: Do not delay while awaiting final autopsy reports, death certificates, etc. Such documents can be forwarded under separate cover.

SEE ALSO: JAGMAN INVESTIGATION and SUICIDES, ATTEMPTS & GESTURES.

DETACHMENT FOR CAUSE (DFC)-- OFFICER

REFERENCES: (a) MILPERSMAN 3410105
(b) MCO P1610.7

ENLISTED DFC: DFC of chief petty officers and selected petty officers are conducted IAW MILPERSMAN 3420260. DFC of officers must be conducted IAW reference (a). BUPERS is the approval authority.

GROUND: Four reasons for requesting an officer DFC:

- Misconduct;
- Unsatisfactory performance involving one or more significant events (gross negligence or complete disregard);
- Unsatisfactory performance over an extended period of time after counseling or LOI;
- Loss of confidence of officer in command.

DFC IS GENERALLY NOT AN OPTION WHEN:

- Reassignment within the command is possible.
- Officer is at PRD, in receipt of orders or has relief on board.
- Other available alternatives exist within the command to resolve the situation.

DOCUMENTATION: Unsatisfactory performance must be properly documented (e.g. LOI). All allegations must be adequately supported by appropriate inquiry or documentation.

DISCIPLINARY ACTION: Must be taken before requesting a DFC based on misconduct or an explanation must be provided to BUPERS.

DFC PAPERWORK: Notification to the member must advise the officer that an approved DFC request will be filed in the officer's official record.

OPPORTUNITY TO RESPOND: The officer must be given 10 calendar days to provide a written response to the DFC request.

DOMESTIC VIOLENCE / FAMILY ADVOCACY INCIDENTS

- REFERENCES:**
- (a) SECNAVINST 1752.3 (series)
 - (b) DOD Directive 6400
 - (c) 10 U.S.C. Sec. 1058
 - (d) OPNAVINST 1752.1 (series)
 - (e) OPNAVINST 1752.2 (series)
 - (f) MCO P1752.3B
 - (g) 18 U.S.C Sec 921 (series)

POTENTIAL REPORTING REQUIREMENTS:

- OPREP-3 for major incidents.
Unit SITREPS for minor incidents.
- Major criminal offenses to NCIS. (See *NCIS INCIDENT REPORTING*).
- Violent crime message. (See *VIOLENT CRIME REPORTING*).
- Incidents involving sexual assaults. (See *VICTIM / WITNESS*).
- Incidents involving officers IAW with TYCOM / Second Echelon requirements. (See *OFFICER MISCONDUCT*).

NOTIFICATION TO FAMILY ADVOCACY REPRESENTATIVE (FAR): All allegations of spouse or child abuse. Notify BUPERS (Pers-8 and Pers-6) when allegations of child sexual abuse are made.

TRACK THE CASE: Appoint the XO or a responsible command representative to work with Family Advocacy and provide command input on disposition.

DISPOSITION: The Family Advocacy Case Review Committee (CRC) will make a determination of either "substantiated" or "unsubstantiated" within 90 days. This determination, along with any treatment recommendations, will be forwarded to the commands of the offender and victim, if a different command, in a written report.

- (1) (NAVY ONLY) Command must debrief the alleged offender, victim, or victim's sponsor on the report and their rights and obtain a signed statement of rights form.
- (2) **CO maintains sole discretion over disciplinary action. Family Advocacy review does not preclude or limit command disciplinary action.** (See *ADMINISTRATION & DISCIPLINARY OPTIONS*)

APPEAL OF CRC DETERMINATIONS: (Navy only) CRC determinations can be appealed to the CRC, and then to a Headquarters Review Team at BUPERS. Appeals must be in writing, and normally filed within 30 days of the advisement of the CRC determination. Appeals can be filed by the alleged offender, victim, or command of either, on the following grounds:

- (1) Newly discovered evidence
- (2) Fraud upon the CRC
- (3) Voting member of the CRC absent
- (4) Not Guilty/Guilty finding after a full trial on the merits.
- (5) Plain legal or factual error.

TREATMENT OF VICTIMS: Coordinate under the Victim / Witness Assistance Program. (See *VICTIM / WITNESSES*).

INTERVENTION: Ensure that appropriate actions are taken to provide for the protection of victims during the investigation and processing of a FAP case [e.g. issuance of a military protective order (MPO) to remove the military member from the family home (whether on or off base); coordination with local child protective services to have the child removed from the home; or issuance of an order barring alleged perpetrators from Navy installations]. (See *LAW ENFORCEMENT CIVILIAN JURISDICTION*).

MILITARY PROTECTIVE ORDERS (MPO): Written order requiring member to move out of home or to "stay away" from complainant. Should be issued whenever it is likely or foreseeable that further incidents will arise. Should be issued in writing. Temporary in nature but may be renewed and should be in force until Family Advocacy counselors have intervened. Will also protect members from false allegations. Consult with a legal advisor.

INTERVIEWING OR QUESTIONING SUSPECTED OFFENDERS: Should not be done if a law enforcement agency (NCIS or civilian) is investigating. (See *NCIS INCIDENT REPORTING & SUSPECT--QUESTIONING*).

ALCOHOL RELATED INCIDENTS: DAPA / CAAC screening should be conducted.

MANDATORY PROCESSING: ADSEP processing must be initiated for sexual perversion, or in any case involving conduct which caused or could have caused death or serious bodily injury. (See *ADMINISTRATIVE SEPARATIONS*).

ADMINISTRATIVE BOARDS: Request assignment of a Judge Advocate to act as the command representative.

Weapons Possession: If convicted at SPCM / GCM or any civilian court, of crime of domestic violence - service member is no longer permitted to possess a firearm.

EQUAL OPPORTUNITY (EO) INCIDENT

REFERENCES:

- (a) OPNAVINST 5354.1 (series)
- (b) MCO P5354.1B
- (c) ALMAR 058/94

EVALUATE INCIDENT AS MINOR OR SERIOUS: (see *APPENDIX D*).

POTENTIAL REPORTING REQUIREMENTS:

- OPREP-3 for serious incidents.
- Unit SITREPS for minor incidents.
- Major criminal offenses to NCIS. (See *NCIS INCIDENT REPORTING*).
- Violent crime message. (See *VIOLENT CRIME REPORTING*).
- Incidents involving Sexual Harassment. (See *SEXUAL HARASSMENT*).
- Incidents involving sexual assaults. (See *VICTIM / WITNESS*).
- Incidents involving officers IAW with TYCOM / Second Echelon requirements. (See *OFFICER MISCONDUCT*)

INVOLVE THE EOPS / CMEO OFFICER / COMMAND LEGAL ADVISOR IMMEDIATELY.

PREVENT REPRISALS: Remove the alleged perpetrator from the work space if reprisal or reoccurrence is likely.

PRIVACY ACT CONSIDERATIONS: Maintain the confidentiality of all parties involved.

COMPLAINANT / VICTIM ASSISTANCE: Provide complainant with victim counseling support or referral services at the outset. Monitor and provide follow-up services as required (see *VICTIM / WITNESS*). Provide feedback to complainant w/in a reasonable time. Consider appointing a personal advocate to assist the complainant IAW reference (a).

MENTAL HEALTH EVALUATION: Do not order psychiatric evaluation of the complainant or alleged offender as reprisal. Must comply with requirements of the Mental Health Instruction. (see *MENTAL HEALTH EVALUATION*).

INFORMAL RESOLUTION: Encourage use of the Informal Resolution System prior to the filing of a formal complaint.

INVESTIGATION: Ensure investigating officer is neutral and qualified. Consider outside investigator if investigation would have appearance of being partial to either complainant or alleged offender. Coordinate all efforts with the command legal advisor. *See reference (a).*

DISCIPLINARY OR ADMINISTRATIVE ACTION: Take timely and tailored action when appropriate. Focus remedies on solving the problem. [*See reference (a)* and *ADMINISTRATIVE & DISCIPLINARY OPTIONS*]

EXTREMIST GROUPS or HATE GROUPS: [*see reference (a)* and *FREEDOM OF EXPRESSION*].

FAMILY SUPPORT

REFERENCES: (a) MILPERSMAN 6210120
(b) MCO P5800.8

ALLOTMENTS: Encourage all married personnel on sea duty to provide allotments to their dependents.

NONSUPPORT OR INSUFFICIENT SUPPORT COMPLAINTS: Ensure the member is interviewed and informed of the Navy policy regarding support of dependents. Members should be referred to a Legal Assistance Attorney and the command financial counselor.

SEPARATION AGREEMENTS AND VALID COURT ORDERS: Members must comply with the support provisions or use the civilian court system to obtain a change.

NO COURT ORDER OR MUTUAL AGREEMENT: Recommended support scale is contained in reference (a).

REQUEST FOR WAIVER OF OBLIGATION TO PROVIDE SPOUSAL SUPPORT: DFAS may grant a waiver in cases involving desertion, physical abuse, or infidelity. Commands should endorse request to verify circumstances.

MISCONDUCT BY THE SPOUSE: A member's duty to support minor children is not affected by spousal misconduct.

PATERNITY ACKNOWLEDGEMENT: Member admitting paternity must furnish support to the child. (See *PATERNITY*).

DOCUMENT UNSATISFACTORY PROGRESS: Counseling should be documented on a Page 13 SRB entry.

ADMINISTRATIVE SEPARATION: May ADSEP for a set pattern of failure to contribute adequate support or failure to follow court orders. (See *ADMINISTRATIVE SEPARATION*).

DISCIPLINARY ACTION: May be imposed if a member fraudulently obtained BAQ / VHA. (See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*).

FOREIGN CRIMINAL JURISDICTION / SOFA

REFERENCES:

- (a) JAGMAN section 0609
- (b) JAGMAN section 1010
- (c) Fleet Deployment / Legal Manuals
- (d) Applicable Status of Forces Agreements (SOFA)

APPREHENSION OF U.S. MILITARY PERSONNEL BY FOREIGN AUTHORITIES: Report via OPREP / SITREP. All efforts should be made at the local level to secure the member's release pending final resolution of judicial proceedings. Members not released should be encouraged to notify parents and / or spouse or allow command to notify. Upon release members should be given complete medical examination and should provide sworn statement concerning conditions of confinement.

IMPORTANT CONTACTS: The following individuals may be able to assist: Consulate / Embassy / USDAO country representatives, NCIS regional offices, husbanding agents.

SOFA COMPLIANCE: In countries where the U.S. has a SOFA, the terms of that agreement will determine whether the member may be removed from the jurisdiction and whether the U.S. or host country will prosecute the case. In many countries, disciplinary action under the UCMJ (including NJP) may not be conducted until the issue of jurisdiction has been resolved with the host country. Consult with the cognizant SJA.

NO SOFA: If there is no SOFA, COs are not authorized to deliver members or civilian employees of DON or their dependents to foreign authorities. Contact the cognizant SJA.

WARSHIP SOVEREIGNTY: U.S. warships are immune from any other nation's jurisdiction. COs shall not permit his / her ship to be searched or allow personnel to be removed by foreign authorities. If foreign authorities use force to compel submission, the CO should resist to the utmost of his / her power. (See U.S. Navy Regulations 0828).

PERSONNEL RETAINED IN FOREIGN CUSTODY: Must be visited on a regular basis and may not be separated from the service until they complete sentence and return to U.S.. (See MILPERSMAN 3849260 or MCO p1900.16 par. 1006.2i).

FREEDOM OF INFORMATION ACT (FOIA)

REFERENCES:

- (a) JAGMAN, Chapter V
- (b) SECNAVINST 5720.42 (series)
- (c) SECNAVINST 5820.8 (series)

ACCESS TO RECORDS: FOIA gives all persons (including foreign citizens and governments) a right to access Navy "agency records" unless such records are specifically exempted from disclosure.

- (1) Records includes information maintained in an electronic format.
- (2) Commands shall make records available in any form requested by the person, including electronic formats.

INITIAL DENIAL AUTHORITIES (IDA'S): Only an IDA may deny release of a properly requested record.

- IDA's are typically Flag Officer's or General Court-Martial Convening Authorities (GCMCA's).

TIME LIMITS: FOIA requests must be processed within 10 working days. (Note: effective October 1997 this will be extended to 20 days). While there are ways to obtain formal or informal extensions, this usually requires permission of the IDA.

SPECIAL RECORDS: Certain FOIA requests require special handling. Requests for the following must be forwarded to the appropriate release authority:

- NCIS reports.
- IG reports.
- Court-martial records.
- JAGMAN investigations.
- Mishap and safety reports.
- Nuclear information.
- Medical quality assurance reports.

EXEMPTIONS: If you have any question over whether a record must be released, forward the FOIA request and the documents in issue to the IDA. Some of the specific exemptions under FOIA include:

- Classified information.
- Purely internal rules and procedures.
- Memos containing internal advice and recommendations.
- Records which contain personal and private information (e.g., medical and service records, mailing lists containing names and/or addresses of deployable units, etc.).
- Law enforcement records.

TRACKING: FOIA action officers should be keeping track of any and all reimbursable fees (record search and review time, duplication costs, etc.). Use DD Form 2086 (contained in reference (b)) for all FOIA requests. Such records will also help in submitting annual FOIA reports (due January of each year).

REQUESTS FOR INFO RELATED TO LITIGATION: If the FOIA request (or any other request for information) is believed to be related to litigation in which the government is or might become a party, notify your servicing NLSO and OJAG, Code 35, at DSN 221-9880, (702) 325-9880. *See reference (c).*

FOREIGN CLAIMS

REFERENCES: (a) JAGMAN Chapter VIII

PURPOSE & SCOPE: Promote friendly relations with foreign countries by promptly paying meritorious claims for death, injury, property damage or other loss caused by U.S. military members. The claim must arise outside the U.S. and its territories, possessions or commonwealths.

VALID CLAIMANT: Inhabitants of foreign countries including persons, corporations or other government or business entities and U.S. citizens living abroad. Does not include tourist, travelers, U.S. service members or their dependents.

EXAMPLES OF CLAIMS NOT COVERED: Combatant claims, admiralty incident, patent infringement, claims of insurers, purely contractual claims of individuals or claims for paternity (see JAGMAN 0812).

ESTABLISHMENT OF CLAIMS COMMISSIONS: COs should appoint responsible officers to adjudicate foreign claims. TYCOM directives may limit the authority to settle claims or require Judge Advocate approval. Foreign claims officers must diligently follow the requirement of reference (a) when investigating, documenting, adjudicating and reporting incidents.

PRIVATE SETTLEMENT: When a wrongdoer or group of individuals are identified as having committed a negligent and / or non-scope of duty act, private settlement and voluntary restitution is an option that should be considered. Private settlement must be voluntary on the part of the member(s). The foreign claims officer should thoroughly document the incident in the same manner as a foreign claim, and ensure that a final settlement agreement and release is signed by the member and the claimant to prevent additional or supplementary claims for the same damage.

FUNDING FOREIGN CLAIMS: Payment is not made from command OPTAR. Funding source information is contained in reference (a).

FRATERNIZATION INCIDENT

- REFERENCES:**
- (a) OPNAVINST 5370.2 (series)
 - (b) Art. 1165, U.S. Navy Regulations, 1990
 - (c) UCMJ ARTICLE 134

POTENTIAL REPORTING REQUIREMENTS:

- OPREP-3 for major incidents.
- Unit SITREPS for minor incidents.
- Major criminal offenses to NCIS. (See *NCIS INCIDENT REPORTING*).
- Violent crime message. (See *VIOLENT CRIME REPORTING*).
- Incidents involving Sexual Harassment. (See *SEXUAL HARASSMENT*).
- Incidents involving sexual assaults. (See *VICTIM / WITNESS*).
- Incidents involving officers IAW with TYCOM / Second Echelon requirements. (See *OFFICER MISCONDUCT*).

BACKGROUND: Unduly familiar personal relationships between seniors and subordinates are contrary to naval custom because they undermine the respect for authority that is essential to the Navy's ability to accomplish its mission. Fraternization is prohibited and punishable under the UCMJ.

PROHIBITED RELATIONSHIPS:

- **Officer / Enlisted:** Personal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in grade or rank. Such relationships are prejudicial to good order and discipline and violate long-standing traditions of the naval service.
- **Officer / Officer and Enlisted / Enlisted:** Personal relationships between officer members or between enlisted members that are unduly familiar and that do not respect differences in grade or rank when prejudicial to good order and discipline or of a nature to bring discredit on the naval service. Prejudice to good order and discipline may result from, but are not limited to, circumstances which:
 - call into question a senior's objectivity;
 - result in actual or apparent preferential treatment;
 - undermine the authority of a senior; or
 - compromise the chain of command.

EXAMPLES OF PROHIBITED RELATIONSHIPS: Dating, cohabitation, sexual relationships, and / or private business partnerships.

DIRECT SENIOR-SUBORDINATE SUPERVISORY RELATIONSHIP: Not a prerequisite for fraternization.

SAME CHAIN-OF-COMMAND: Not a prerequisite for fraternization.

GENDER-NEUTRAL: The focus is on the detriment to good order and discipline, not the sex of the parties.

SUBSEQUENT MARRIAGE: Does not excuse or mitigate.

MARRIED MEMBERS: Will not be assigned to the same chain of command (compatible with needs of the Navy).

RESPONSIBILITY FOR PREVENTION: Rests primarily on the senior. Both members are accountable for their own conduct.

MULTI-SERVICE COMMANDS: Must create clear policies because of differences in service regulations.

ADMINISTRATIVE OR DISCIPLINARY OPTIONS: Investigate allegations and take appropriate administrative or disciplinary action. [See *APPENDIX F: Fraternization Investigation Chart & ADMINISTRATIVE & DISCIPLINARY OPTIONS*].

FREEDOM OF EXPRESSION

REFERENCES:

- (a) DOD Directive 1325.6 (series)
- (b) SECNAVINST 5720.44 (series)
- (c) SECNAVINST 1600.1 (series)
- (d) DOD Directive 1300.17 (series)
- (e) SECNAVINST 1730.8 (series)

CO'S BALANCING TEST: Constitutional rights involving freedom of expression should be preserved to maximum extent possible, consistent with mission accomplishment and security, and good order and discipline.

NO CONTEMPTUOUS WORDS: Article 88 UCMJ prohibits officers from being disrespectful to senior governmental leaders (i.e. President, Vice President, Congress, SECDEF, SECNAV, SECARMY, SECUSAF, etc.).

PORNOGRAPHY:

- Private possession cannot be prohibited (except child pornography).
- Display and distribution can be controlled.
- Contact SJA for questions concerning sales at NEX or ship stores.

HANDBILLS, POSTERS, LEAFLETS, NEWSLETTERS, PAPERS, NOTICES:

CO can and should require prior approval before distribution. Apply the balancing test stated above and rule of equal treatment.

MANDATORY PAO / SECURITY REVIEW: Required for any publication written by military member that "pertains to military matters."

See reference (b).

ON-BASE "GATHERINGS": Prohibited if clear danger to loyalty, morale, good order and discipline or interference with mission accomplishment. Apply the rule of equal treatment.

OFF-BASE "GATHERINGS": Attendance may be prohibited if clear danger to loyalty, morale, good order and discipline or interference with mission accomplishment. Also, if sponsored by a "hate-group"; or violence is likely; or an illegal march.

OFF-LIMITS: A CO may declare places temporarily "off-limits" in emergencies until the Armed Forces Disciplinary Control Board (AFDCB) or Area Coordinator can act. Reasons for declaring places off limits: clear danger to loyalty, morale, good order and discipline; interference with mission accomplishment; adverse affect upon health, safety, welfare or morals; engages in discriminatory practices; etc.

NO MILITARY UNIONS, strikes, slowdowns, picketing.

MEMBERSHIP IN SUPREMACIST OR EXTREMIST GROUPS: "Active" participation in such organizations is prohibited. Active participation includes: publicly demonstrating or rallying, fundraising, recruiting and training members, organizing or leading such organizations, or otherwise engaging in activities in furtherance of such organizations that are viewed by command to be detrimental to good order, discipline, or mission accomplishment.

- (1) Commanders have the authority to employ the full range of administrative or disciplinary actions against members who actively participate in such organizations. See reference (a).
- (2) (NAVY ONLY) Mandatory processing for substantiated cases. See Administrative Separations - Basics

RIGHTS TO PETITION FOR REDRESS OF GRIEVANCES: (See *REQUEST MAST / ARTICLE 138 COMPLAINT* & see *CONGRESSIONALS*).

RELIGION: Policy is to accommodate practice of religion to the extent possible. See reference (e).

SEE also *POLITICAL ACTIVITIES*.

HIV ISSUES

REFERENCES:

- (a) SECNAVINST 5300.30 (series)
- (b) SECNAVINST 1850.4 (series)
- (c) NAVMC 2904 (*CO'S Handbook on HIV*)
- (d) MCO 5300.30C

NOTIFICATION OF POSITIVE SCREENING: Results must be provided to all medical / dental record holders.

ASSESSMENT INTERVIEW: Must be completed by cognizant medical health authority, and include counseling on risk factors, transmission factors, and blood donation.

LIMITATIONS ON USE OF HIV INFORMATION: Information gained during initial medical interviews cannot be used against the member in court-martial, NJP, administrative separation proceedings, as a bar to enlistment, or a basis for adverse eval or fitrep marks.

CONFIDENTIALITY IS THE RULE: Handle HIV information with the highest degree of confidentiality. Information shall not be released to anyone unless there is a demonstrated need to know. Privacy Act considerations strictly applicable.

WRITTEN PROTECTIVE ORDERS: Ensure that "safe sex" order has been issued by the appropriate medical authority.

ASSIGNMENT OF MEMBER: HIV+ member is not deployable and is normally assigned within 300 miles of a Naval Medical Treatment Facility (e.g. Balboa, Portsmouth, Bethesda).

VOLUNTARY SEPARATION: If member requests w/in 90 days after initial classification is completed (i.e. when member signs medical board report). Characterization is type warranted by service record (honorable or general). Separation may be delayed up to 180 days after initial evaluation to minimize manning shortfalls.

INVOLUNTARY SEPARATION: Authorized for HIV + members who develop AIDS. Use the Disability Retirement System IAW reference (b). The 1996 DoD Authorization Act included provision for mandatory adsep of HIV+ personnel within 6 months. An unresolved issue at time of this printing.

HOMOSEXUAL CONDUCT

- REFERENCES:**
- (a) 10 U.S.C. 654
 - (b) DOD Directive 1332.14
 - (c) DOD Office of General Counsel ltr of
18 Aug 95
 - (d) MILPERSMAN 3630400
 - (e) ALMAR 65-94
 - (f) MARCOPSEPMANCHP 6

NEW FOCUS: Homosexual conduct NOT sexual orientation. Homosexual conduct includes both homosexual acts and statements by a member that he \ she is homosexual or bisexual or words to that effect.

SAFETY OF THE MEMBER: Determine whether member should be moved within the command, transferred TAD, or if other security measures are warranted for the member's safety pending investigation and / or ADSEP processing.

INVESTIGATIONS: NCIS will only investigate incidents that involve force, coercion, minor children, or where other serious criminal activity is involved. NCIS is precluded from investigating a consensual activity case. In these cases the command must initiate a "fact-finding inquiry" and assign the matter to a commissioned officer (IO) who should conduct the investigation with utmost discretion.

REASONS FOR INITIATING AN INVESTIGATION: Only the CO may initiate an investigation. Must have "credible information" that a reason for ADSEP exists (homosexual conduct). Rumors, suspicions, or mere associational activity such as patronizing a "gay bar," or attending a homosexual rights rally, is not credible information. The decision to investigate must be based on first hand knowledge from a "reliable person."

INTERVIEWING THE MEMBER, EXPLANATION OF POLICY: The IO must advise and explain to the member the DOD Policy on homosexual conduct set forth in reference (b), including the mandatory processing consequences. Article 31(b) UCMJ rights should be afforded to anyone suspected of an offense (e.g. sodomy, conduct unbecoming, indecent acts, fraternization.) (See *SUSPECTS - QUESTIONING*).

INTERVIEWING THE MEMBER FOR ALLEGED CONDUCT: The member should not be asked, nor is the member required to reveal, whether he / she is a heterosexual, homosexual, or bisexual. The focus of the interview must be on their CONDUCT and NOT their "status" or sexual orientation. The IO may ask if the member engaged in the homosexual CONDUCT at issue. The IO "must be able to clearly and specifically explain which grounds for separation he / she is attempting to verify and how the information sought relates to the specific basis(es) at issue." (See *SUSPECTS-- QUESTIONING*).

INTERVIEWING THE MEMBER IN A "STATEMENTS CASE": Reference (c) provided clarifying guidance confirming that the mere statement of homosexual orientation raises the rebuttable presumption that the member has the propensity to engage in homosexual acts. Reference (c) permits the IO to ask the member whether he / she has engaged in, attempts to engage in, or has the propensity to engage in homosexual acts. The member may also be asked why he / she made the statement and what he / she meant by the statement. (See *SUSPECTS-- QUESTIONING*).

MANDATORY ADSEP PROCESSING FOR HOMOSEXUAL CONDUCT: Must initiate if CO determines that member engaged in or will engage in homosexual conduct. Mandatory processing does not equal mandatory separation. Member can rebut presumption of homosexual conduct or ADSEP board may vote to retain. BUPERS & CMC retain separation authority. Request a JAG to act as the command representative at any ADSEP Board. (See *ADMINISTRATIVE SEPARATION*).

CHARACTERIZATION OF SERVICE: Honorable, general, or entry level separation, unless there is a finding that member attempted, committed, or solicited: a homosexual act involving force or coercion; with a subordinate; in public view; with someone under the age of 16; on a naval aircraft or vessel; or on board military property.

INDEBTEDNESS COMPLAINT

REFERENCES:

- (a) MILPERSMAN 6210140
- (b) UCMJ ARTICLE 134
- (c) MCO P5800.8

EXPECTATIONS: Members must pay their just financial obligations in a proper and timely manner.

COMPLAINTS: Counsel member and refer the member to a Legal Assistance Attorney and the command financial counselor.

DISPUTED CLAIMS: No internal DON authority exists to adjudicate disputed claims or enforce settlement of private claims made against members.

DOD STANDARDS OF FAIRNESS AND THE TRUTH IN LENDING ACT REQUIREMENTS: Must be fully satisfied before acting on a complaint from a "creditor." [See *reference (a)*].

COOPERATION WITH "CREDITORS ": Should be limited to administrative referral of correspondence to the member.

"DEBT COLLECTION AGENCY": Do not process the complaint without evidence that the member has granted permission for the collector to contact the command under the provisions of the Fair Debt Collection Practices Act. [See *reference (a)*].

RESPONSES: Use the sample letters in reference (a).

DOCUMENTING A MEMBERS FAILURE: Use a pg. 13 administrative remarks for continuing problems.

DISCIPLINARY ACTION: May be initiated when there is a dishonorable failure to pay just debts under Article 134, UCMJ. (See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*).

ADMINISTRATIVE SEPARATION: May be used when there is a pattern of failure to pay just debts (must violate counseling first). (See *ADMINISTRATIVE SEPARATIONS*).

INVOLUNTARY ALLOTMENT APPLICATIONS: Process IAW DOD Directive 1344.9.

JAGMAN INVESTIGATIONS

REFERENCES:

- (a) JAGMAN, Chapter II
- (b) MILPERSMAN 4210100
- (c) (LEGADMINMAN) MCO P5800.8

RECENT CHANGE: Chapter II of the JAGMAN underwent significant revision in 1995, with major changes made to the way investigations are convened, conducted and forwarded.

TYPES OF INVESTIGATIONS: There are now 4 types of "JAGMAN Investigations."

- Courts of Inquiry.
- Boards of Inquiry.
- Command Investigations.
- Litigation-Report Investigations.

PRELIMINARY INQUIRY (PI): The JAGMAN now provides CA's the option to conduct a 3-day PI to determine whether further investigation is required. Based upon the result of the PI, the CA may decide to take no action or to convene some form of JAGMAN Investigation. Results of PI's need to be reported to ISIC through normal reporting methods.

LITIGATION-REPORT INVESTIGATIONS: This newest form of JAGMAN Investigation (added 1995) is utilized when the primary purpose of the investigation is to defend the legal interests of the Government. The Lit-Report is designed to be "Attorney Work-Product," and thus protected from release during litigation. There are special rules for convening and conducting:

- The CA must consult with the "cognizant judge advocate" before convening.
- Special Convening Order.
- The investigation is conducted under direction and supervision of a JAG.
- Special rules for witness statements.
- Opinions & recommendations only ordered under the authority of the JAG.

ENDORSEMENTS: CO's should address any & all deficiencies identified in the investigation, and detail corrective action taken. Special rules apply in referencing certain admin and disciplinary actions (e.g., nonpunitive letters shall not be mentioned).

- Command Investigations: Forward to GCMCA. It is no longer appropriate to make OJAG the ultimate addressee.
- Lit-Reports: Forward to OJAG, via SJA of GCMCA. Special markings are required.

RETENTION.

- Command Investigations: retain copy for 2 years.
- Lit-Reports: retain copy for 2 years in specially marked file which is protected from disclosure.

FOIA RELEASE AUTHORITIES.

- Command Investigations: GCMCA (Flag) is the final reviewer.
- Lit-Reports: OJAG.

LOD \ MISCONDUCT CHANGES: Whenever an injury occurs which requires a LOD \ Misconduct determination, the command must conduct a PI and forward the results to the GCMCA using the Personnel Casualty Report. See *reference (b)*.

DOCUMENTING LOD \ MISCONDUCT.

- Health-record entries: Where CO and medical agree injury was "in the LOD, not due to misconduct."
- Command Investigations: Where possibility that determination will be "not in the LOD."

DEATH CASES.

- "Limited Investigation": Authorized where member's death occurs in CONUS, off-base, while on liberty, and there is no discernable nexus between circumstances of death and the naval service.
- JAGMAN Investigations: Required in all cases not meeting above test.
- See *DEATH INVESTIGATIONS*.

JURY DUTY

REFERENCES:

- (a) SECNAVINST 5822.2 (SERIES)
- (b) 28 U.S.C. 1863(B)(3)
- (c) 10 U.S.C. 982

AUTOMATIC FEDERAL COURT EXEMPTIONS: Reference (b) exempts all active duty members from serving on federal juries.

AUTOMATIC STATE COURT EXEMPTIONS: Flag officers, commanding officers, members assigned to operating forces; those in a training status; and those outside conus are exempt from serving on state juries under reference (a).

DISCRETIONARY STATE COURT EXEMPTIONS: Officers with authority to convene special courts-martial (SPCM) may exempt members from state / local juries if jury duty would:

- unreasonably interfere with performance of their duties; or
- adversely affect readiness of command as a whole.

HOW TO EXEMPT: CO should sign written letter to appropriate state official (normally clerk of courts) exempting member.

OIC OR CO WITHOUT AUTHORITY TO CONVENE SPCM: Should forward request with a recommendation and justification as soon as possible.

FOR MEMBERS AVAILABLE FOR JURY DUTY: Should not be charged leave or lose any entitlement.

- Fees received by member for jury duty must be turned over to the U.S. TREASURY.

LAW ENFORCEMENT -- CIVILIAN JURISDICTION

- REFERENCES:**
- (a) 40 U.S.C. Sect. 255
 - (b) OPNAVINST 5100.12 Series
 - (c) 18 U.S.C. Sect. 1382
 - (d) Navy Regulations, 1990, Article 0810
 - (e) MCO 5100 series
 - (f) MCO 5710 series

BASE INTEGRITY AND SECURITY PARAMOUNT: The installation commander, under the Internal Security Act of 1950, retains ultimate authority to protect his / her installation from any threat, no matter what type of jurisdiction is present.

THREE TYPES OF JURISDICTION (some installations will have different types in different areas):

- **EXCLUSIVE:** Federal government has exclusive authority to make and enforce local laws.
- **CONCURRENT:** State has equal authority to make and enforce local laws.
- **PROPRIETARY:** Federal government is merely a tenant on the land and retains no power to make or enforce local laws.

JURISDICTION DOES NOT AFFECT ENFORCEMENT OF UCMJ OVER MILITARY PERSONNEL: UCMJ is applicable in all places and at all times to all active duty.

CIVILIAN MISCONDUCT:

- **EXCLUSIVE AREAS:** Civilian misconduct may be prosecuted in Federal Magistrate's Court. Local SJA, NLSO or TSO will have a Special Assistant U.S. Attorney to prosecute. Minor driving infractions may be handled in a base traffic court. *See reference (b).*
- **CONCURRENT AREAS:** State law applies with equal force as federal law. DON or civilian law enforcement may respond and either may pursue prosecution. **MUST** have a memorandum of understanding with civilian law enforcement on these issues.

- **PROPRIETARY AREAS:** State law controls. State law enforcement normally make all arrests and prosecution will be in state courts. Active duty may also be prosecuted in state court for traffic violations and other crimes but will not necessarily preclude punishment under UCMJ for same offense.

DETENTION OF CIVILIAN FOR DELIVERY TO CIVILIAN AUTHORITIES: Regardless of the type of jurisdiction may not confine civilians, but may "detain" for a reasonable time for civilian Law Enforcement pickup. Notify NCIS immediately. (See also *SERVICE OF PROCESS / SUBPOENAS*)

DEBARMENT OF CIVILIANS: Civilians who commit misconduct and / or present a threat to good order and discipline on the base, may be barred by the base CO from entering the installation. Issue a written barring order. Those who violate the order may be tried in federal court, fined and / or imprisoned. See *references (c) and (d)*.

LAW ENFORCEMENT - SUPPORT OF CIVILIAN POLICE AGENCIES

REFERENCES:

- (a) 18 U.S.C. Sect. 1385
- (b) SECNAVINST 5820.7 (series)
- (c) JAGMAN CHAPTER VI, Part A

REPORTING REQUIREMENT: If DON assets are requested, permission must come from SECNAV or SECNAV designee. If approved, cost recovery for DON is required.

POSSE COMITATUS ACT: Willful use of Army / Air Force to execute civilian laws, without authorization from Constitution or Congress is a criminal offense.

■ **DON POLICY:** Act is adopted as applicable to USN / USMC.

■ **EXAMPLES OF PROHIBITED ACTIVITIES:**

- Search and seizure.
- Arrest; stop and frisk.
- Surveillance; pursuit; undercover operations.

■ **EXAMPLES OF PERMITTED ACTIVITIES:**

- Use of equipment / facilities with SECNAV approval.
- When primary purpose is to enforce UCMJ; good order and discipline or protection of classified equipment / info.
- Suppression of insurrection / domestic violence.
- Protection of President; VP; dignitaries.
- Maintenance of loaned equipment.
- Training and expert advice on operation of equipment.

■ **APPLICATION:** Posse Comitatus only applies to active duty in a duty status or when acting in an official capacity.

CONFINEMENT OF MILITARY MEMBER FOR DELIVERY TO CIVILIAN AUTHORITIES: Servicemember may be held in confinement if necessary under circumstances but only for a reasonable period to facilitate delivery to the civilians. Civilians **MUST** have a warrant or reasonable belief offense committed by member.

DETENTION OF CIVILIAN FOR DELIVERY TO CIVILIAN AUTHORITIES: May NOT confine civilians, but may "detain" for a reasonable time for civilian pickup. Civilians authorities MUST have a warrant or reasonable belief offense committed by person to be confined. (See also *LAW ENFORCEMENT JURISDICTION*).

ARREST WARRANTS FOR ACTIVE DUTY MEMBERS: See reference (c) for detailed guidance.

- **Federal warrant:** Upon display of credentials and warrant, must turn over member.
- **Local State warrant:** Upon display of credentials and warrant, turn over member. Ensure execution of delivery agreement.
- **Out-of-state warrant:** Turn over member only if member waives extradition. Ensure execution of delivery agreement.
- **Foreign arrest warrant:** Notify SOPA SJA immediately. DO NOT release until directed by higher authority.

CO REFUSAL TO ALLOW ARREST: Report to OJAG immediately.

LIBERTY RISK

REFERENCES: Primary instructions governing liberty risk are issued by major overseas and fleet commanders.

APPLICABILITY: Liberty risk only applies in foreign countries or territories. The underlying purpose for liberty risk is to protect U.S. foreign relations with host countries.

DISTINGUISH FROM DISCIPLINARY ACTION: Liberty risk may not be used as punishment and cannot be awarded at NJP or courts-martial. Liberty risk should not be used as a subterfuge for pretrial restraint. Do not use this administrative measure to satisfy the need for discipline. (See *ADMINISTRATIVE & DISCIPLINARY OPTIONS* and *PRETRIAL RESTRAINT*).

GENERAL GUIDANCE:

- Only the CO or acting CO may assign a member to liberty risk (generally after a recommendation from a liberty risk board);
- placement on liberty risk cannot be automatic;
- lesser forms or limitations on liberty should be considered (e.g. limited hours ashore); and
- each individual's status must be regularly reviewed; and liberty risk cannot be indefinite.

RIGHTS OF MEMBERS PLACED IN LIBERTY RISK STATUS:

- Opportunity for request mast with the CO;
- Specific notification in writing of the reason(s) for being placed on liberty risk; and
- May not be required to muster or participate on special working parties with members serving punishment issued at NJP or courts-martial.

ALCOHOL RELATED INCIDENTS: DAPA / CAAC screening should be conducted.

MARRIAGES -- OVERSEAS

REFERENCES:

- (a) MILPERSMAN 6210160
- (b) BUPERSINST 1722.1 (series)
- (c) Local 1752 (series)
- (e) MCO 1752.1C

REQUEST / APPLICATION: Any member planning to marry a foreign national overseas must submit an application to the area coordinator. Applications should be sent to the nearest area coordinator. Contact PERS 66 for areas not listed in reference (a).

COUNSELING: Member must be counseled regarding the legal responsibilities incurred by marriage, including financial obligations. Member should also be advised that approval process is often lengthy.

VALIDITY OF FOREIGN MARRIAGE: The marriage must be valid under the law of the jurisdiction where it was performed.

INTENDED SPOUSES: Must receive medical screening and background investigations. Local United States Embassy or Consulate will conduct background investigation, including a criminal and subversive record check.

VISAS: There is no automatic right for foreign spouses to be granted visas to enter the United States. Foreign spouses must apply for an immigrant visa with local embassy or Immigration and Naturalization Service office.

MENTAL HEALTH EVALUATIONS (MHEs)

REFERENCES: (a) DODDIR 6490.1
(b) SECNAVINST 6320.24 (series)

NEW RULES: Reference (a) and (b) provide new guidance in referring a member for mental health / psychiatric evaluation (MHE).

POLICY: Prevent improper command referral (e.g. as reprisal); and ensure members are provided rights in connection with MHEs.

REFERRALS EXEMPTED FROM MHE REQUIREMENTS INCLUDE:

- Patient self-referrals.
- Referral to CAAC / DAPA, Family Advocacy.
- Referral to non-MHP for competence for duty exam.

FUNDAMENTAL PRINCIPLES: Do not refer a member for a MHE as a reprisal for making or preparing a lawful communication to a member of Congress, the chain of command, IG, or other appropriate person. Do not restrict a member from lawfully communicating with an IG, attorney, member of Congress, or other person about appropriateness of MHE referral. Violation of either of these principles may be punished under Art. 92, UCMJ.

CO RESPONSIBILITIES PRIOR TO REFERRAL:

- Consult with Navy psychiatrist / psychologist (MHP)
- Provide member with a written notice of the referral. (Sample in reference (b)).

DELEGATION OF AUTHORITY: CO may delegate these responsibilities but is accountable for actions taken by others in the chain of command (XO, DH, SMO, Chaplain, etc.).

MEMBER'S RIGHTS UPON REFERRAL:

- May not refuse MHE.
- May consult with a JAG for advice about redress.
- May submit allegation of improper referral to IG.
- May be evaluated by MHP of own choosing, if reasonably available.
- No person may restrict member's right to seek redress for referral.
- In situations other than emergencies, member shall have 2 business days before MHE to meet with an attorney, IG, chaplain or other appropriate party.

EMERGENCY CIRCUMSTANCES: If member is a "danger to self, or others" referral may be made w/out prior consultation with MHP or written notice to the member.

- Prepare written memo documenting reasons for not complying and provide copies to member and MHP for inclusion in health record.

MEMBER'S RIGHTS IF INVOLUNTARILY ADMITTED:

- MHP must advise of nature, purposes and consequences of treatment.
- Right to contact friend, attorney, IG, or relative ASAP.
- Right to submit allegations to IG that MHE made as a reprisal.
- Right to evaluation w/in 2 business days to determine if continued hospitalization is justified.
- Right to notification of reasons for continued hospitalization.
- Right to have review w/in 72 hours by independent MHP appointed to determine appropriateness of continued hospitalization (right to attorney at the 72 hour review).

MENTAL HEALTH PROFESSIONAL DUTIES:

- Advise member of purpose nature and likely consequences of MHE.
- Report improper MHE referrals to medical chain of command who will report same to offending officer's superiors and the local IG.

ALL ALLEGATIONS OF IMPROPER REFERRAL ARE INVESTIGATED BY NAVY IG AND REPORTED TO DOD IG.

OFFICER MISCONDUCT

REFERENCES:

- (a) MILPERSMAN 3410100
- (b) BUPERS 1610.10 (series)
- (c) Navy Regulations, 1122
- (d) MILPERSMAN 5010110
- (e) SECNAVINST 1920.6 (series)
- (f) OPNAVINST 5510.1 (series)
- (g) MCO P5800.8

NOTIFICATION: BUPERS requires notification and follow on reports for instances of officer misconduct, specifically including:

- Preferral of court-martial charges. A copy of the charge sheet with explanatory information must be sent to PERS-82, with periodic status reports provided.
- Imposition of NJP. Notify PERS-82 by letter as soon as results are "final." NJP results must be sent via the first flag officer in the admin chain of command. See *reference (a)* for appropriate format and informational requirements.
- Arrest by civilian authorities. A "Civil Action Report" must be immediately sent to PERS-82 by message if a BCD would be authorized for the offense under the UCMJ (e.g., drunk driving). When results become "final," a close-out letter report is required.
- UA: All facts and circumstances are to be immediately relayed to PERS-82 by message. Next of kin letters must be sent after 10 days and DD 553 notification sent after 30 days. If the officer had access to classified info, and there are any indications that the UA may be inimical to national security, notify NCIS.

FLEET AND TYCOM REPORTING REQUIREMENTS: Additional reporting requirements may exist pursuant to ISIC directives.

RETENTION: If military disciplinary or civil criminal action may be taken against an officer, they should not be transferred until the action is resolved.

NON-PUNITIVE LETTERS OF CAUTION (NPLOC'S): A common administrative counselling tool in cases for officer malfeasance or neglect. NPLOC's may not be referred to in fitness reports or forwarded to BUPERS. Underlying facts which caused the NPLOC may properly mentioned in fitness reports. If adverse matter is included in a fitness report or other official record, it must be referred to the member for statement. [See BUPERSINST 1610.10 and JAGMAN 0105]. See *NON-PUNITIVE MEASURES*.

ADMIN SEPARATION: Inform BUPERS of any incidents or situations involving an officer whose performance or conduct is such that processing for separation may be appropriate. See *reference (e)* and consult your local SJA / NLSO.

SEE ALSO: *DETACHMENT FOR CAUSE*.

PATERNITY COMPLAINT

REFERENCES: (a) MILPERSMAN 6210125
(b) MILPERSMAN 6210120

POLICY: Members owe the same duty of support to illegitimate children as they would to children born in wedlock.

DETERMINATION OF PATERNITY: DON does not determine disputed paternity actions, this is a matter for state courts.

COURT ORDERS: Members must comply with state court orders.

- Compliance is necessary even if member disputes paternity or does not believe that an official determination of paternity has been made.
- Refer member to legal assistance attorney / civilian attorney to challenge order.

UPON RECEIPT OF A WRITTEN COMPLAINT: Member must be interviewed and counseled IAW reference (a).

ADMISSION OF PATERNITY: If member admits paternity, he should be counseled on obligation to provide support.

- If no court order, support should be made IAW service guidelines in reference (b), or member must enter into a voluntary written agreement with the mother or guardian of the child.
- If member is now eligible for BAQ, PSD will require written acknowledgement of paternity.

DENIAL OF PATERNITY: Refer member to a legal assistance attorney / civilian counsel to challenge paternity action. Use the sample letter to respond to complainant in reference (a).

ADMINISTRATIVE OR DISCIPLINARY ACTION: After counseling, if the member continues to fail to provide child support IAW a state court order, mutual agreement, or service guidelines, administrative or disciplinary action may be warranted. (See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*).

POLITICAL ACTIVITIES -- MILITARY ACTIVE DUTY

- REFERENCES:**
- (a) SECNAVINST 1600.1 (series)
 - (b) DOD Directive 1344.10
 - (c) DOD Directive 1325.6
 - (d) OPNAVINST 1620.2 (series)
 - (e) DODDIR 5500.7-R (JER)
 - (f) MCO 5370.7B

UNIONS: Reference (a) prohibits the creation of military labor organizations, and strikes, slowdowns, or picketing.

ALLOWABLE AND PROHIBITED POLITICAL ACTIVITIES: Specifically allowed activities (e.g., voting, bumperstickers); and prohibited political activities (e.g. use of contemptuous words, performing clerical work for campaign) are listed in enclosure (3) of reference (b), and chapter 6 to reference (e).

CO's ANALYSIS: A CO may prohibit, limit, or control, the political expression of a member when there "is a clear danger to loyalty, discipline, or morale of military personnel; or there is a material interference with the accomplishment of the military mission." See *FREEDOM OF EXPRESSION*.

WEARING UNIFORMS AT POLITICAL RALLIES: Members are prohibited from wearing of uniforms at any political activity, such as speeches, rallies, interviews, picket lines, marches, or assembly, knowing that a purpose of the activity supports personal or partisan views on political, social, economic, or religious issues, except as authorized in advance by the CO.

RIGHT TO DIRECTLY CONTACT CONGRESS: No person may restrict any member from communicating with Congress in the member's personal or private capacity [see Navy Regulations, Section 1155, & *CONGRESSIONAL INQUIRIES*].

PREGNANCY

- REFERENCES:**
- (a) SECNAVINST 1000.10
 - (b) OPNAVINST 6000.1 (series)
 - (c) MILPERSMAN 3620220 (Pregnancy / Childbirth)
 - (d) CNO R012323Z Mar 95
 - (e) MILPERSMAN 3619180
 - (f) MCO 5000.12 (series)
 - (g) ALMAR 67/95

INITIAL COUNSELING RESPONSIBILITIES: Once pregnancy is medically confirmed, servicewoman must be counseled regarding the Navy's pregnancy and parenthood policies, including dependent care plans, administrative separation options, and possible conflicts between parent role and the "Navy's posture of readiness and mobility." Reference (a) & (b) and OPNAV FORM 1740/1 for dependent care plans.

ADMINISTRATIVE SEPARATION OPTIONS: Members may voluntarily request ADSEP based on pregnancy. Member should request discharge prior to the 20th week of pregnancy. General Rule: Request will normally be denied unless the member demonstrates compelling need as determined on a case by case basis. After birth of the child, other bases for ADSEP may apply (e.g., hardship or parenthood).

REQUIRED COUNSELING PRIOR TO SEPARATION: Prior to separation the member must be counseled concerning limited maternity care benefits. Document the counseling on a pg. 13\6105 Administrative Remarks in the SRB.

WORK LIMITATIONS: Detailed guidance is provided on management of pregnant servicewomen, including general duty limitations [i.e. exemptions from regular PT and the PRT, swim quals; parade rest or attention longer than 15 minutes; reduced exposure to unsafe chemical, toxic agents; after 28 weeks of pregnancy ensure member is allowed to rest 20 minutes every 4 hours (including in a chair with feet up); and limited 40 hour work week].

CONVALESCENT LEAVE: Six weeks authorized; extensions may be authorized by CO.

SHIPBOARD CONSIDERATIONS: Pregnant servicewomen **MUST** be transferred from the ship before the 20th week of pregnancy or date of deployment whichever is first. Pregnant on deployment: send member TAD to nearest US military facility with OB / GYN care. "6 Hour Rule": Even when not deployed pregnant member cannot get underway if time required for medevac to emergency OB / GYN care exceeds 6 hours.

EVACUATION OF PREGNANT MEMBERS: If a non-combatant evacuation is ordered, all pregnant servicewomen who have reached the 20th week of pregnancy will be evacuated as "noncombatants." The area commander has authorization to direct evacuation of members who have not reached the 20th week upon the analysis set forth in reference (b).

BREASTFEEDING: Servicewomen may breastfeed infants during times allotted for meals and breaks. Alternatives, (e.g., breastpumping) are advised.

PRIORITY OB / GYN MEDICAL CARE: Active duty servicewomen will be given priority for OB / GYN care in DON medical facilities. Active duty servicewomen assigned to deploying units or positions (w/in 3 months), will be given priority over all other active duty servicewomen. *See reference (d).*

FOLLOW ON TOURS: A servicewomen who was transferred from her unit due to pregnancy will be returned to the same ship or unit or to an equivalent billet in a command of the same duty type (e.g., shall complete sea tour).

See: ADMINISTRATIVE SEPARATIONS.

PRIVACY ACT

REFERENCES:

- (a) JAGMAN, Chapter V
- (b) SECNAVINST 5211.5 (series)
- (c) OPNAVNOTE/MCBUL 5211

PURPOSE: The Privacy Act limits the government in collecting personal information that will be stored in a "system of records," and permits an individuals access to information in a "system of records" that contains personal information about them, unless specifically exempted from disclosure.

DENIAL AUTHORITIES: Only a proper "Denial Authority" may deny release of a properly requested record. "Denial Authorities" are typically Flag Officer's or General Courts-Martial Convening Authorities (GCMCA).

PRIVACY ACT WARNINGS: Required when someone from the command is requesting "personal information" (e.g., SSN) which will then be stored in a "system of records" (e.g., medical or personnel files, training records, JAGMAN investigations, etc.). Sample warning forms are provide in Chapter II to reference (a).

INDIVIDUAL ACCESS TO FILES: In most cases, an individual may access any record that contains personal information about them (e.g., medical and personnel files, unit punishment book, etc.). There are some exceptions to this rule.

THIRD PARTY ACCESS TO FILES: In most cases, a third party may not access any record that contains personal information about someone else. There are some exceptions, including

- Internal release within DoD ("need to know").
- Statistical research.
- Law enforcement activity.
- Congressional inquiries (where made on behalf of individual).

TIME LIMITS: Privacy Act requests are to be acted upon with 10 days.

TRACKING: For each record disclosed in response to a Privacy Act request, document such release with a "Disclosure Accounting Form" [OPNAVFORM 5211/9 - contained in reference (b)].

REPOSSESSION OF PERSONAL PROPERTY

REFERENCES: (a) JAGMAN Section 0622

DISCRETION OF THE INSTALLATION CO: Repossession of personal property belonging to military personnel located on a naval installation may be permitted at the discretion of the installation CO. The "repo-man" must obtain permission from the CO in advance.

PROPERTY BELONGING TO CIVILIAN EMPLOYEES OR CONTRACTORS: CO should order property removed from the installation until the matter is resolved.

LOCAL INSTRUCTIONS OR DIRECTIVES: Should be implemented to ensure standard procedures are followed.

DOCUMENTS AUTHORIZING REPOSSESSION MUST COMPLY WITH LOCAL STATE LAW: The installation SJA should review the documents.

INFORMAL INQUIRY BEFORE REPOSSESSION IS ALLOWED: Contact the member to determine if he / she is aware of the problem, and rule out administrative error (i.e., an allotment problem).

IF REPOSSESSION IS TO BE ALLOWED: The owner of the property should be afforded the opportunity to voluntarily relinquish the property. The member should be referred to a Legal Assistance Attorney.

NO BREACH OF THE PEACE: Ensure that the repossession is carried out in the manner prescribed by the CO. Contact base security and have them on the scene to avoid any problems or altercations.

REQUEST MAST / REDRESS OF WRONGS / ART. 138 UCMJ

- REFERENCES:**
- (a) NAVY REGULATIONS sections 1150, 1151, 1153, 1156
 - (b) ARTICLE 138 UCMJ
 - (c) JAGMAN Chapter III

REQUEST MAST: Member's of the Naval service have the right to communicate directly with the CO at a proper time and place.

- CO's should encourage request mast in order to resolve matters at the lowest level. Once a request mast is submitted, all levels of the COC should work to resolve the problem. Only the individual submitting the chit may withdraw the chit. If withdrawn, the reason thereof should be documented and preserved.
- Request Mast is an individual right. Article 1153 prohibits members from joining together to protest or complain.
- Request Mast is with the CO. Requests to see higher authority should be handled at Request Mast and if the matter is not resolved the CO should forward the request up the chain of command with a recommendation. There is no "right" to a "personal audience" with a superior above the CO (it is a matter within the sole discretion of that superior).

NAVY REGULATIONS ARTICLE 1150 -- REDRESS OF WRONGS:

- Formal complaint that may be filed against any superior. (Complaints against the CO are filed under Article 138 after the complainant has requested redress from the CO).
- If the superior is in the same chain of command, the CO should handle through Request Mast procedures. If the matter is resolved no report to higher authority is required.
- If the superior is not in the same chain of command, the complaint should be forwarded via the respondent's CO to the cognizant CO and to the officer exercising GCM authority over the respondent. The GCM authority is required to inquire into the matter.

- If the grievant considers the resolution unjust the grievant may file an Article 138 Complaint against the cognizant CO.

UCMJ ARTICLE 138 COMPLAINTS:

- See JAGMAN Chapter III.
- Made against a CO after a request for redress has been denied.
- Must be endorsed and forwarded within 10 days to the officer exercising GCM authority over the CO and after investigation (regardless of resolution), must be forwarded to SECNAV.
- A complainant may withdraw a complaint at any time but it must be in writing and forwarded up the chain of command if the complaint has already been forwarded. If the complaint has not been endorsed or forwarded the CO should document and preserve the withdrawal.

CHECKLIST FOR GCM AUTHORITY: See *APPENDIX G*.

SERVICE OF PROCESS / SUBPOENAS

REFERENCES: (a) JAGMAN, Chapter VI, Part B
(b) SECNAVINST 5820.8 (series)

CO's CONSENT / CO's PRESENCE: Service of process (a summons to appear in court as a party) will not be permitted without the CO's consent. Where practicable, the member should be served within the CO's presence or that of another designated officer.

IMMEDIATELY REFER MEMBER TO A LEGAL ASSISTANCE ATTORNEY.

LOCAL STATE COURT OR FEDERAL COURT SERVICE OF PROCESS: CO should permit service upon members, civilian employees or dependents except in unusual cases when compliance would prejudice the public interest.

■ **VESSELS IN TERRITORIAL WATERS OF A STATE:** Should be considered within the jurisdiction of that state for purposes of service of process.

COURTS LOCATED OUT OF STATE: Service of process shall normally be permitted under the same conditions as in-state service, but the CO shall ensure that the member is advised that he / she need not accept service.

SERVICE BY OUT-OF-STATE MAIL: If member refuses to accept, the refusal should be noted and the documents returned to sender.

FOREIGN COURT / OVERSEAS SERVICE OF PROCESS: Normally addressed by the applicable SOFA. Contact overseas area coordinator SJA.

RELATION TO OFFICIAL DUTIES: When service of process upon a member or civilian employee arises from performance of official duties, ensure that the member is notified of his / her applicable rights IAW section 0616 of ref (a), and that copies of the process and pleadings along with a description of the pertinent facts are provided to the local NLSO for immediate notification to JAG (Code 34).

NORMALLY GRANT LEAVE OR LIBERTY: Personnel who are served with or accept process should normally be granted leave or liberty unless prejudicial to naval service. MILPERSMAN 3020560.

(Continued on next page)

SERVICE OF SUBPOENAS: (Court orders requiring a person to testify as a witness) shall be handled in the same manner as service of process with the following exceptions:

- If service member is subpoenaed as a witness on behalf of the federal gov't, the member will be issued TAD orders.
- If service member is subpoenaed as a witness on behalf of accused in federal court, no-cost permissive orders should be issued unless the member's absence would prejudice the command.
- If service member is subpoenaed as a witness on behalf of a party to a civil or state criminal action with no federal gov't interest, leave or liberty should be granted if not prejudicial to command. (No-cost permissive orders shall be issued if witness is subpoenaed because of performance of official duties).

REQUESTS FOR STATEMENTS AND / OR INTERVIEWS WITH SERVICE MEMBERS BY PARTIES TO PRIVATE LITIGATION: Notify the cognizant NLSO or SJA. *See reference (b).*

ARREST WARRANTS: *See LAW ENFORCEMENT -- SUPPORT OF CIVILIAN POLICE AGENCIES.*

SEXUAL HARASSMENT (SH) INCIDENT

- REFERENCES:**
- (a) SECNAVINST 5300.26 (series)
 - (b) OPNAVINST 5354.1 (series)
 - (c) U.S. Navy Regulations, 1990, Article 1166
 - (d) NAVOP 028/94
 - (e) NAVADMIN 212/94
 - (f) NAVADMIN 244/94
 - (g) Commander's Handbook, For Prevention of Sexual Harassment
 - (h) NAVPERS 5354/2 (12-94) Formal Complaint
 - (i) NAVPERS 15620 Informal Resolution
 - (j) MCO P5354.1B

POTENTIAL REPORTING REQUIREMENTS:

- OPREP-3 for major incidents.
- Unit SITREPS for minor incidents.
- Major criminal offenses to NCIS. (See *NCIS INCIDENT REPORTING*).
- Violent crime message. (See *VIOLENT CRIME REPORTING*).
- Incidents involving sexual assaults. (See *VICTIM / WITNESS*).
- Incidents involving officers IAW with TYCOM / Second Echelon requirements. (See *OFFICER MISCONDUCT*).

SPECIAL REPORTING REQUIREMENT: OPREP is required if after a formal complaint is filed, the investigation is not started within 3 days or is not completed within 14 days. Interim reports are required every 14 days until final report is submitted. [see reference (e) and (d)].

PREVENT REPRISALS: Remove the alleged perpetrator from the work space if there is reasonable possibility of further sexual harassment or reprisal. [See reference (f)].

COMPLAINANT / VICTIM ASSISTANCE: Provide the complainant with victim counseling support or referral services at the outset. Monitor and provide follow-up services as required. (See *VICTIM / WITNESS*). Consider appointing a personal advocate to assist the complainant IAW reference (b).

PRIVACY ACT CONSIDERATIONS: Maintain the confidentiality of all parties involved. (See *PRIVACY ACT*).

(Continued on next page)

MENTAL HEALTH EVALUATION: Do not order psychiatric evaluation of the complainant or alleged perpetrator unless the requirements of the DOD Mental Health Instruction have been met. (See *MENTAL HEALTH EVALUATION*).

INFORMAL RESOLUTION: Encourage command use of the Informal Resolution System prior to the filing of a formal complaint. (See *reference (i)*).

FORMAL COMPLAINT: Use reference (h) "Formal Complaint Form". Start investigation within 3 days and complete within 14 days. (See *APPENDIX E: Steps for Investigating SH Complaints*).

LEVEL OF INVESTIGATION: COs determination based on seriousness and magnitude of incident. Ensure investigating officer is neutral and qualified. Consider outside investigator if command investigation would have appearance of being partial to either complainant or alleged perpetrator. Coordinate all efforts with the command legal advisor.

DISCIPLINARY OR ADMINISTRATIVE ACTION: Take timely and tailored action when appropriate. Focus remedies on solving the problem. (See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*).

MANDATORY ADMINISTRATIVE DISCHARGE PROCESSING: Required for substantiated incidents which involve:

- Actions, threats or attempts to influence another's career or job in exchange for sexual favors; or
- Physical contact of a sexual nature which, if charged as a violation of the UCMJ, could result in a punitive discharge. (See *ADMINISTRATIVE SEPARATIONS*).

SUICIDES, ATTEMPTS & GESTURES

REFERENCES:

- (a) MILPERSMAN 4210100
- (b) JAGMAN 0226
- (c) OPNAV 5510.1 (series)
- (d) SECNAVINST 632024 (series)
- (e) "Suicide Prevention"

PERSONNEL CASUALTY REPORTS: Required for any suicide, and also for any case where a member attempts suicide or makes other suicide gestures.

NCIS NOTIFICATION: If member had access to classified information.

ACTUAL SUICIDE: See *DEATH INVESTIGATIONS*.

LINE OF DUTY / MISCONDUCT DETERMINATIONS: Will not be made if there is an actual suicide. In suicide attempt or gesture cases, where there is a permanent disability or physical inability to perform duties in excess of 24 hours, a determination is required. Convene a JAGMAN investigation (normally Command Investigation).

- In the case of a true suicide attempt, there is a strong inference that the member lacked mental responsibility. Therefore, the likely outcome will be that the member was "in the line of duty" and "the injury was not due to own misconduct."
- In the case of suicide gestures (an intentional infliction of injury without serious suicidal intent), the likely outcome will be that the member was "not in the line of duty" and "the injury was due to own misconduct."

MENTAL HEALTH EVALUATIONS: Members who express suicidal ideations should be immediately referred to DoD mental health professionals. Normally, this can be considered an emergency situation for purposes of reference (d). See *MENTAL HEALTH EVALUATIONS*.

VIOLENT CRIME REPORTING (VCR)

REFERENCES:

- (a) GENADMIN/CINCLANTFLT/081600Z AUG 95
- (b) GENADMIN/CINCPACFLT/021721Z APR 95
- (c) OPNAVINST 3100.6

MANDATORY MESSAGE REPORT: Whenever command milpers / civpers are involved (on or off base) as either the suspect or victim of violent crime.

DEFINITION OF "VIOLENT CRIMES": Murders, rapes, robberies, aggravated assaults, simple assaults, sexual assaults, child abuse, spouse abuse etc.. ANY VIOLENCE THAT COMES TO THE ATTENTION OF THE COMMAND OR BASE POLICE.

DISTINGUISH FROM OPREP / SITREP: Requirement to report violent crimes is separate from the requirement to submit OPREP / SITREP pursuant to ref (c). However, if a OPREP / SITREP will be submitted, the information necessary to meet the Violent Crime reporting requirement may be included in the remarks section of the OPREP / SITREP.

WHEN OPREP / SITREP IS NOT SUBMITTED: The VCR should be submitted via message to the fleet commander with info addressees including TYCOM, regional commanders (COMNAVBASE etc.) and others in the chain of command as necessary.

MESSAGE SUBMISSION RESPONSIBILITIES: The parent command of the victim / suspect is responsible for sending the VCR.

MESSAGE FORMAT: See reference (a) and (b).

REPORTING SEXUAL ASSAULTS (SAVI): See VICTIM / WITNESS ISSUES.

VICTIM / WITNESS ISSUES

- REFERENCES:**
- (a) DOD Directive 1030.1
 - (b) SECNAVINST 5800.11 (series)
 - (c) NAVADMIN 061/95 CNO 202000Z Mar 95
 - (d) CNO Washington DC 152203Z Feb 95

APPOINT A COMMAND VICTIM & WITNESS ASSISTANCE COORDINATOR:

Responsible individual should be appointed in writing to coordinate victims / witnesses issues and to act as a Data Collection Coordinator per references (a)-(d).

BASIC REQUIREMENTS: Upon notification of incident wherein a victim or witness of a crime is identified, ensure that rights advisement are made utilizing form DD-2701 IAW references (a) and (b).

- **Victim:** A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime.
- **Witness:** A person who has information or evidence concerning a crime, and provides that knowledge to a DoN a representative about an offense in the investigative jurisdiction of the DoN.

PREVENT REPRISAL: Protect victims and witness. Remove alleged perpetrator from workspace if necessary. For alleged military perpetrator consider necessity of issuing a Military Protective Order (MPO). (See *FAMILY ADVOCACY / DOMESTIC VIOLENCE* or see *PRETRIAL RESTRAINT*). An MPO may be issued in situations other than family violence (e.g., boyfriend / girlfriend disputes). Consider TAD transfer of alleged perpetrator or victim. If victim is military or military dependent refer to Legal Assistance Attorney for advice on civilian protective order. If alleged perpetrator is civilian consider debarment from the base.

COUNSELING AND TREATMENT: Victims of sexual assault and rape should receive immediate treatment and counseling. See *reference (d)*.

PSYCHIATRIC EVALUATION: Do not refer a victim (complainant) or witness for a mental health evaluation unless it is done in compliance with the Mental Health Evaluation Instruction. (See *MENTAL HEALTH EVALUATION*).

FOLLOW UP INFORMATION: Provide information and assistance to victims and witnesses at all stages. Victims and witnesses should be informed regarding: arrest of accused (or changes in confinee status); investigative status; decisions not to prosecute; preferral / referral of charges; conviction, sentencing and / or final resolution. *See reference (a) and (b).*

POTENTIAL INCIDENT REPORTING REQUIREMENTS:

- OPREP-3 for major incidents.
- Unit SITREPS for minor incidents.
- Major criminal offenses to NCIS. (*See NCIS INCIDENT REPORTING*).
- Violent crime message. (*See VIOLENT CRIME REPORTING*).
- Incidents involving Sexual assaults (SAVI). (*See below*).
- Incidents involving Sexual Harassment. (*See SEXUAL HARASSMENT*).
- Incidents involving officers IAW with TYCOM / Second Echelon requirements. (*See OFFICER MISCONDUCT*).

ADDITIONAL REPORTING REQUIREMENT FOR SEXUAL ASSAULT INCIDENTS (SAVI): In addition to requirements listed above, commands must report to Echelon II Commanders within 10 days of receiving a report of incident and submit follow-up reports monthly until resolution. *See reference (c).*

- Sexual assault includes rape, forcible sodomy, assault with intent to commit rape or sodomy, and indecent assault.
- Must report assaults occurring in areas of Navy control regardless of victims or perpetrator's duty status, military affiliation, or nationality.
- Must report incidents involving victims who are family members and victims and alleged perpetrators who are active duty naval service members or another service assigned to a naval command regardless of location of incident.
- Incidents involving sexual assault victims who are under age 18 or married to the perpetrator should be reported through the family advocacy program. (*See DOMESTIC VIOLENCE / FAMILY ADVOCACY INCIDENTS*).

SUPPORT AND PUBLICIZE THE SEXUAL ASSAULT VICTIM INTERVENTION (SAVI) PROGRAM: Establish an atmosphere of zero tolerance of sexual assault and rape. *See reference (d).*

SECTION V

APPENDIX

- A. NONJUDICIAL PUNISHMENT CHART
- B. SEARCH & SEIZURE CHECKLIST
- C. COURTS-MARTIAL PUNISHMENT CHART
- D. EO INCIDENT REPORTING
- E. SEXUAL HARASSMENT INVESTIGATION CHART
- F. FRATERNIZATION INVESTIGATION CHART
- G. ARTICLE 138 COMPLAINT CHECKLIST
- H. EXECUTIVE OFFICER INQUIRY (XOI) GUIDE
- I. USE OF POSITIVE URINALYSIS
- J. ADMINISTRATIVE SEPARATIONS

LIMITS OF PUNISHMENTS UNDER UCMJ, ART. 15 – TABLE ONE

Imposed by	Imposed by	Confinement on B&W or DIMRATS (2)	Correctional Custody (3)	Arrest in Quarters (1)	Forfeiture (6) (5)	Reduction (6) (8)	Extra Duties (4)	Restrictions to Limits (4)	Admonition (6)	Reprimand (6)
General Officers in Command	Officers	No	No	1/2 one mo. 30 days	for 2 mos.	No	No	60 days	Yes	Yes
	E-4 to E-9	No	No	No	1/2 one mo. for 2 mos.	1 grade	45 days	60 days	Yes	Yes
	E-1 to E-3	3 days	30 days	No	1/2 one mo. for 2 mos.	1 grade	45 days	60 days	Yes	Yes
	Officers	No	No	No	No	No	No	30 days	Yes	Yes
O-4 to O-6	E-4 to E-9	No	No	No	1/2 one mo. for 2 mos.	1 grade	45 days	60 days	Yes	Yes
	E-1 to E-3	3 days	30 days	No	1/2 one mo. for 2 mos.	1 grade	45 days	60 days	Yes	Yes
	Officers	No	No	No	No	No	No	15 days	Yes	Yes
O-3 below and / or OJNC's (7)	E-4 to E-9	No	No	No	7 days	1 grade	14 days	14 days	Yes	Yes
	E-1 to E-3	3 days	7 days	No	7 days	1 grade	14 days	14 days	Yes	Yes
(1)	May not be combined with restriction									
(2)	May be awarded only if attached to / embarked in a vessel and may not be combined with any other restraint punishment or extra duties									
(3)	May not be combined with restriction or extra duties									
(4)	Restriction and extra duties may be combined to run concurrently but the combination may not exceed the maximum imposable for extra duties									
(5)	Shall be expressed in whole dollar amounts only									
(6)	May be imposed in addition to or in lieu of all other punishments									
(7)	OIC's have NJP authority over enlisted personnel only									
(8)	Chief petty officers (E-7 through E-9) may not be reduced at NJP in the Navy; Marine Corps NCO's (E-8 through E-9) may not be reduced at NJP (check current directives relating to promotions)									

Appendix A

CO SEARCH & SEIZURE CHECKLIST

I. FINDING THE EXISTENCE OF PROBABLE CAUSE TO ORDER A SEARCH:

When faced with a request by an investigator to authorize a search, what should you know before you make the authorization? The following considerations are provided to aid you.

A. Find out the name and duty station of the applicant requesting the search authorization.

B. Administer an oath to the person requesting authorization. A recommended format for the oath is set forth below:

"Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God?"

C. What is the location and description of the premises, object, or person to be searched?

Ask yourself:

1. Is the person or area one over which I have jurisdiction?

2. Is the person or place described with particularity?

D. What facts do you have to indicate that the place to be searched and property to be seized is actually located on the person or in the place your information indicates it is?

E. Who is the source of this information?

1. If the source is a person other than the applicant who is before you, that is, an informant, see the attached addendum on this subject.

2. If the source is the person you are questioning, proceed to question 6 immediately. If the source is an informant, proceed to question 6 after completing the procedure on the addendum.

F. What training have you had in investigating offenses of this type or in identifying this type of contraband?

G. Is there any further information you believe will provide grounds for the search for, and seizure of, this property?

- H. Are you withholding any information you possess on this case which may affect my decision on this request to authorize the search?

If you are satisfied as to the reliability of the information and that of the person from whom you receive it, and you then entertain a reasonable belief that the items are where they are said to be, then you may authorize the search and seizure. It should be done along these lines:

"(Applicant's name), I find that probable cause exists for the issuance of an authorization to search (location or person) for the following items: (Description of items sought)"

II. SEARCH AUTHORIZATIONS: INFORMANT ADDENDUM

- A. **First inquiry.** What forms the basis of his or her knowledge? You must find what **facts** (not conclusions) were given by the informant to indicate that the items sought will be in the place described.

- B. Then you must find that **either** the informant is reliable or his information is reliable.

1. Questions to determine the informant's reliability:

- (a) How long has the applicant known the informant?
- (b) Has this informant provided information in the past?
- (c) Has the provided information always proven correct in the past?
Almost always? Never?
- (d) Has the informant ever provided any false or misleading information?
- (e) (If drug case) Has the informant ever identified drugs in the presence of the applicant?
- (f) Has any prior information resulted in conviction? Acquittal? Are there any cases still awaiting trial?
- (g) What other situational background information was provided by the informant that substantiates believability (e.g., accurate description of interior of locker room, etc.)?

2. Questions to determine that the information provided is reliable:

- (a) Does the applicant possess other information from known reliable sources, which indicates what the informant says is true?
- (b) Do you possess information (e.g., personal knowledge) which indicates what the informant says is true?

H. Are you withholding any information you possess on this case which may affect my decision on this request to authorize the search?

If you are satisfied as to the reliability of the information and that of the person from whom you receive it, and you then entertain a reasonable belief that the items are where they are said to be, then you may authorize the search and seizure. It should be done along these lines:

"(**Applicant's name**), I find that probable cause exists for the issuance of an authorization to search (**location or person**)■ for the following items: (**Description of items sought**)".

III. SEARCHES: DESCRIBE WHAT TO LOOK FOR AND WHERE TO LOOK

Requirement of specificity: No valid search authorization will exist unless the place to be searched and the items sought are particularly described.

A. Description of the place or the person to be searched.

- 1. **Persons.** Always include all known facts about the individual, such as name, rank, SSN, and unit. If the suspect's name is unknown, include a personal description, places frequented, known associates, make of auto driven, usual attire, etc.
- 2. **Places.** Be as specific as possible, with great effort to prevent the area which you are authorizing to be searched from being broadened, giving rise to a possible claim of the search being a "fishing expedition."

B. **What can be seized.** Types of property and sample descriptions. The **basic rule:** Go from the general to the specific description.

- 1. **Contraband:** Something which is illegal to possess.

Example: "Narcotics, including, but not limited to, heroin, paraphernalia for the use, packaging, and sale of said contraband, including, but not limited to, syringes, needles, lactose, and rubber tubing."

2. ***Unlawful weapons:*** Weapons made illegal by some law or regulation.

Example: Firearms and explosives including, but not limited to, one M-60 machine gun, M-16 rifles, and fragmentation grenades.

3. ***Evidence of crimes***

(a) ***Fruits of a crime***

Example: "Household property, including, but not limited to, one G.E. clock, light blue in color, and one Sony fifteen-inch, portable, color TV, tan in color with black knobs."

4. ***Tools or instrumentalities of crime.*** Property used to commit crimes.

Example: "Items used in measuring and packaging of marijuana for distribution, including, but not limited to, cigarette rolling machines, rolling papers, scales, and plastic baggies."

5. ***Evidence which may aid in a particular crime solution:*** helps catch the criminal.

Example: "Papers, documents, and effects which show dominion and control of said area, including, but not limited to, canceled mail, stencilled clothing, wallets, receipts."

PUNISHMENT CHART

PUNISHMENT	SCM			SPCM			GCM		
	E-4 & below	E-5 & above	EM's	O's & WO's	EM's	WO's	O's		
1. Death	NO	NO	NO	NO	YES (*)	YES (*)	YES (*)	YES (*)	
2. Dismissal	NO	NO	NO	NO	NO	NO	NO	YES	
3. Dishonorable Discharge	NO	NO	NO	NO	YES	YES	YES	NO	
4. Bad-Conduct Discharge	NO	NO	YES	NO	YES	NO	NO	NO	
5. Confinement	30 days	NO	6 mos.	NO	YES (*)	YES (*)	YES (*)	YES (*)	
6. Solitary Confinement	NO	NO	NO	NO	NO	NO	NO	NO	
7. Confinement on Bread and Water or Diminished Rations	3 days (*)	NO	3 days(*)	NO	3 days(*)	NO	NO	NO	
8. Restriction	2 mos.	2 mos.	2 mos.	2 mos.	2 mos.	2 mos.	2 mos.	2 mos.	
9. Hard Labor Without Confinement	45 days	NO	3 mos.	NO	3 mos.	NO	NO	NO	
10. Forfeiture of All Pay and Allowances	NO	NO	NO	NO	YES	YES	YES	YES	
11. Forfeiture of two-thirds pay per month	1 mo. (*)	1 mo. (*)	6 mos.	6 mos.	YES (*)	YES	YES	YES	
12. Fine	YES (*)	YES (*)	YES (*)	YES (*)	YES	YES	YES	YES	
13. Reduction to next inferior rate	YES	YES	YES	NO	YES	NO	NO	NO	
14. Reduction to lowest paygrade	YES	NO	YES	NO	YES	NO	NO	NO	
15. Loss of numbers	NO	NO	NO	YES	NO	YES	YES	YES	
16. Reprimand	YES	YES	YES	YES	YES	YES	YES	YES	

(*) Where authorized or mandatory

(*) if attached to or embarked in a naval vessel

(*) May extend payment up to three months -- JAGMAN 0052a(2)

(*) If given, a fine or a fine and forfeiture combination may not exceed the maximum amount of forfeitures which may be adjudged in a case

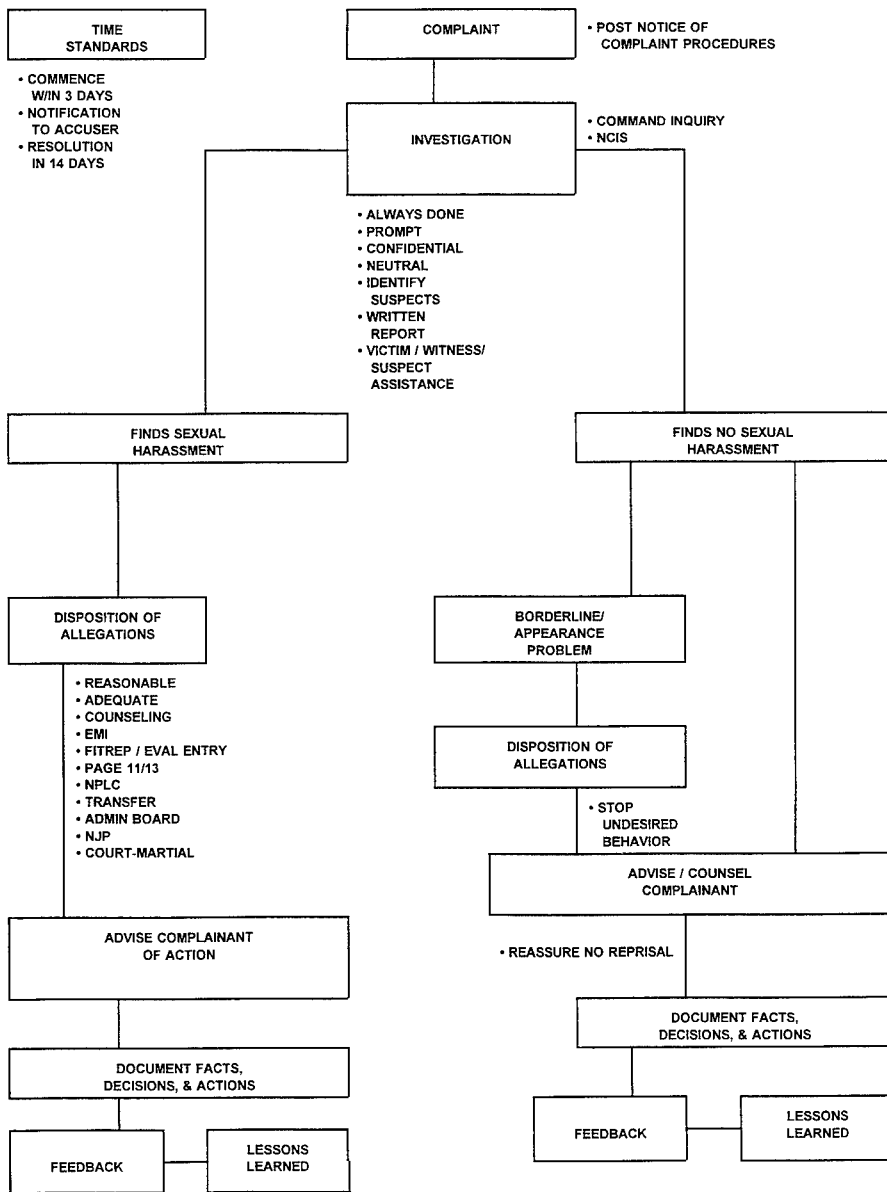
(*) Maximum punishment listed for each offense in Part IV, MCM

Appendix C

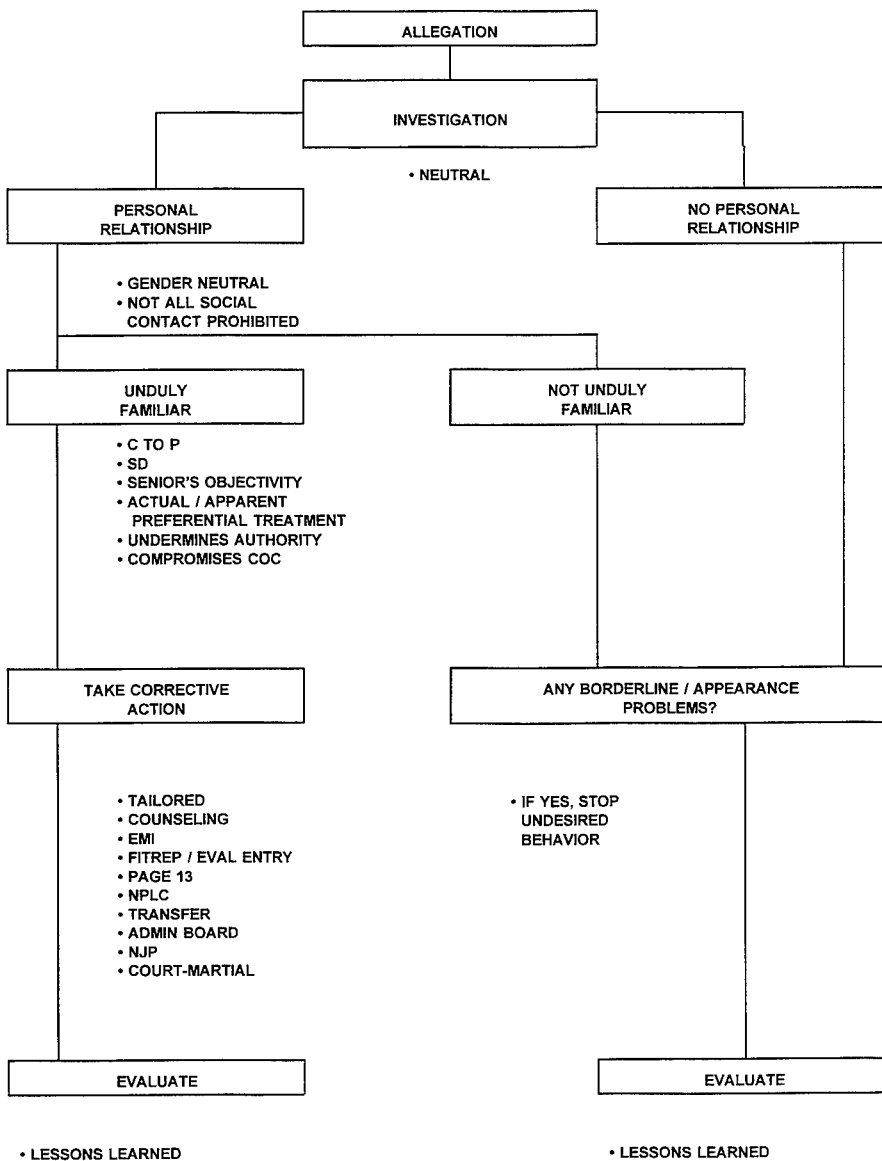
EEO INCIDENT REPORTING
(MINOR / SERIOUS)
FROM OPNAVINST 5354.1 (series)

CRITERIA/ CLASSIFICATION	NUMBER OF PARTICIPANTS	DURATION	PROPERTY DAMAGE	PERSONAL INJURY	RELATIONSHIP TO OTHER INCIDENTS	THREAT TO AUTHORITY OR MISSION
MINOR	2-5	SHORT, LESS THAN 30 MINUTES	LITTLE OR NONE		AN ISOLATED EVENT	NO THREAT TO AUTHORITY OR MISSION
SERIOUS	6 OR MORE	MORE THAN 30 MINUTES	EXTENSIVE OR SERIOUS PROPERTY DAMAGE (i.e. ARSON)	PERSONAL INJURIES REQUIRING MEDICAL ATTENTION OR DEATH	(1) RELATED TO OTHER MINOR INCIDENTS OR (2) PRESS INTEREST ANTICIPATED OR HAS OCCURRED	(1) PRESENTATION OF DEMANDS AND / OR DEFIANCE OF AUTHORITY OR (2) DISOBEDIENCE OF LAWFUL ORDERS MISSION IS / MAY BE THREATENED

STEPS IN HANDLING SEXUAL HARASSMENT COMPLAINTS



HANDLING FRATERNIZATION ALLEGATIONS



**CHECKLIST FOR GCM REVIEW
OF ARTICLE 138 COMPLAINTS**

- ☐ Original complaint or certified copy received
- ☐ Complaint is complete (See Appendix A-3-a(1), *JAG Manual*)
- ☐ Includes all documents submitted by complainant and intermediate endorers
- ☐ Signed and sworn by complainant
- ☐ Cites Article 138, UCMJ
- ☐ Addressed through respondent and appropriate chain of command
- ☐ Clearly identifies respondent (and only one respondent) by name and title
- ☐ Reflects complainant has made a prior request for redress from respondent which was denied (request and respondent's response should be enclosures to complaint)
- ☐ Respondent has Article 15, UCMJ, power over complainant
- ☐ Facts and circumstances giving rise to alleged wrong(s) are detailed and available supporting information included
- ☐ Personal detriment or harm suffered from alleged wrong(s) detailed
- ☐ Specific relief requested
- ☐ Requested relief may be granted in command channels
- ☐ Complaint lies within scope of Article 138, UCMJ
- ☐ Complaint is timely, 90 days unless unusual circumstances
- ☐ If complaint is not cognizable under Article 138, UCMJ, OEGCMJ shall return it to complainant advising alternative avenues of redress (e.g., Article 1150, *U.S. Navy Regulations, 1990*, complaint or petition to the Board for Correction of Naval Records). Acts which are not cognizable under article 138 include:
 - ☐ Acts not initiated or ratified by the respondent
 - ☐ Acts which are not final

- ___ General policy matters
- ___ Requests for disciplinary action on another
- ___ GCMA action on article 138 complaint (except failure to forward)
- ___ Other DON procedures exist for redress of the specific type of complaint
- ___ If the complaint is cognizable under article 138, but otherwise defective, OEGCMJ will:
 - ___ Return complaint and advise complainant of nature of defect
 - ___ Give complainant 30 days to cure defect
 - ___ Advise complainant that complaint will be acted on despite defect only if complainant so desires and resubmits his complaint within 30 days.
- ___ If redress is denied for failure to cure improper joinder (complaints may not be joined with complaints of other individuals) or lack of timeliness, OEGCMJ must report to SECNAV
- ___ If cognizable complaint, OEGCMJ will conduct inquiry into complaint
- ___ Ensure complainant receives copies of all endorsements, enclosures, and adverse matters added to his complaint (including results of any inquiries ordered by OEGCMJ) and that record reflects that complainant received such materials
- ___ If relief is granted, include documentation of relief granted or that action to effect relief has been directed
- ___ Advise complainant in writing of OEGCMJ's action on complaint including specific findings as to which complaints were determined to have merit and which were found to be without merit
- ___ OEGCMJ personally signed report to SECNAV setting forth action on complaint
- ___ Include in the report to SECNAV the entire file including original / certified copy of complaint, all information considered by OEGCMJ, and the action of OEGCMJ
- ___ Marine Corps activities forward the report via CMC

EXECUTIVE OFFICER'S INQUIRY (XOI)

1. Obtain the report chit, all written statements, and all physical and documentary evidence relating to the alleged offense from the legal officer. (You may want to consult with the legal officer prior to XOI).
2. Call in the accused and all reasonably available witnesses who can testify about either the alleged offense or extenuating (E), mitigating (M), or aggravating (A) circumstances concerning the alleged offense.
3. Inform the accused that the CO is contemplating the imposition of NJP and that this informal hearing -- the XOI -- is part of the NJP process. The accused may not refuse XOI.
4. Describe the specific offense(s) to the accused, including the article of the UCMJ that was allegedly violated.
5. If applicable, advise the accused of the right to refuse NJP. (Accused can never refuse XOI.)
6. Advise the accused (s)he does not have to make a statement regarding the offense(s) and that any statement made by him / her can be used as evidence against him / her at XOI and NJP.

Note: If it is reasonably foreseeable that the accused's statements during the XOI may be considered for introduction in a later court-martial, an explanation of rights and a waiver—in the format of appendix A-1-m of the *JAG Manual*—will have to be obtained from the accused during the hearing, before proceeding further.

7. Ask the accused what happened.
 - a. If (s)he admits guilt, the accused should be allowed to articulate any E & M.

- Ask the witnesses to testify on matters of E & M or A.
- b. If (s)he denies guilt, the accused should be asked for his / her version of the facts.
 - Ask the witnesses to testify about the alleged offense.
 - Inform the accused of any other evidence against him / her concerning the alleged offense (i.e. written statements and / or physical and documentary evidence).
 - Allow for rebuttal, as appropriate.
 - Ask the witnesses to testify on matters of E, M, and A.
- 8. Ask the accused if (s)he would like to make a final statement.
- 9. If the CO has given you the power to dismiss cases and you feel dismissal is warranted, either dismiss the case outright or dismiss it with a warning. (Such action does not preclude later NJP for the same offense.) You may also impose nonpunitive measures. If you feel NJP is warranted, indicate this on the report chit and return all materials to the legal officer who will take appropriate action.

USE OF DRUG URINALYSIS RESULTS

	Usable in disciplinary proceedings	Usable as basis for separation	Usable for (other than honorable) characterization of service
1. Search or Seizure	YES	YES	YES
- member's consent	YES	YES	YES
- probable cause	YES	YES	YES
2. Inspection			
- random sample	YES	YES	YES
- unit sweep	YES	YES	YES
3. Medical - general diagnostic purposes (e.g., emergency room treatment, annual physical exam, etc.)	YES	YES	YES
4. Fitness for duty			
- command-directed	NO	YES	NO
- competence for duty	NO	YES	NO
- aftercare testing	NO	YES	NO
- surveillance	NO	YES	NO
- evaluation	NO	YES	NO
- mishap / safety investigation	NO	NO	NO
5. Service-directed			
- rehab facility staff (military members)	YES	YES	YES
- drug / alcohol rehab testing	NO	YES	NO
- PCS overseas, naval brigs	YES	YES	YES
- entrance testing	NO	YES	*NO (R
- accession training pipeline	YES	YES	YES (R
* YES for reservists recalled to active duty only (except Delayed Entry Program participants)			

3610220 ADMINISTRATIVE SEPARATION AUTHORITY OF ENLISTED PERSONNEL

1. Determining Separation Authority. Use the following chart to determine separation authority

If the member is being processed for separation by reason of . . .	THEN, subject to the rules at the end of this chart, the separation authority is the . . .
Selected Changes in Service Obligation - Inactive Reserves Selected Changes in Service Obligation -Immediate reenlistment Selected Changes in Service Obligation - Within 90 days of EAOS Expiration of Service Obligation	Commanding Officer or higher
Convenience of the Government - Other designated physical or mental conditions Convenience of the Government - Review action Convenience of the Government - Dependency or hardship Convenience of the Government - Parenthood Convenience of the Government - Pregnancy or childbirth Convenience of the Government - Personality disorder Convenience of the Government - Surviving family member Convenience of the Government - Reservist becomes a minister Weight control failure Entry level performance and conduct Unsatisfactory performance Drug abuse rehabilitation failure Alcohol abuse rehabilitation failure Defective Enlistments and Inductions - Erroneous Defective Enlistments and Inductions -Minority Defective Enlistments and Inductions - Defective enlistment agreements Defective Enlistments and Inductions -Separation from delayed entry program	Special Court-Martial Convening Authority (SPCMCA) or higher

IF the member is being processed for separation by reason of . . .	THEN, subject to the rules at the end of this chart, the separation authority is the . . .
Defective Enlistments and Inductions - Fraudulent entry into the Naval service Misconduct - A pattern of misconduct Misconduct - Commission of a serious offense Misconduct - Civilian conviction Misconduct - Drug abuse Unsatisfactory participation in the ready reserves	GCMCA or higher when the Administrative Board Procedure is used and: - Board recommended OTH - Board recommended retention - Member waived a Board; or - Member requested a conditional waiver. SPCMCA or higher when: - The Notification Procedure is used; or - The Administrative Board Procedure is used and the Board recommended separation with an Honorable, General, or Entry Level Separation.
Separation in lieu of trial by court-martial	GCMA or higher, unless request is based only on an absence without leave for more than 30 days, then the SPCMCA is separation authority. (Except homosexual conduct cases - Pers-83 serves as Separation Authority) Note: see Article 3630650.2d.
Early release to further education Selected Changes in Service Obligation - General Demobilization or reduction in authorized strength Selected Changes in Service Obligation - Acceptance of an active duty commission or appointment, or acceptance into a program leading to such a commission or appointment in any branch of the Military Services. Convenience of the Government - Conscientious objection Homosexual conduct	Chief of Naval Personnel (CHNAVPERS)
Best interest of the service (BIOTS) Disability	Secretary of the Navy (SECNAV)

Rules:

1. The Bureau of Naval Personnel or Secretary of the Navy is separation authority:
 - a. For involuntary separation of active duty reservists within 2 years of retired or retainer pay (10 U.S.C. 12686 refers).
 - b. When the sole basis for separation is a serious offense that resulted in a conviction by a special or general court-martial that did not impose a punitive discharge, and an Other Than Honorable discharge is warranted. Note that if the GCM / SPCM awards a punitive discharge which is suspended, CHNAVPERS is separation authority.
 - c. When a characterization of service as Honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of naval duty for a member in an entry level status who is being separated by reason of Selected Changes in Service Obligation, Convenience of the Government, Disability, or Best Interest of the Service (BIOTS).

In order to download a file from the NJS EBB, you must do three basic things: (1) Obtain the name of the file you wish to download; (2) tell the BBS that you wish to download the file; and (3) tell your communications program to commence the download. That's it!

Obtaining the name of a file to download

First, obtain a list of all categories (file directories) from the main conference by entering "F" (without the quotes) at the main menu. You will be presented with a list of file directories with titles like: "Evidence Study Guide," "Procedure Study Guide," etc. (There are 23 file directories -- #'s 11-21 are NJS publications.) To display the individual file titles, enter the number of the directory you want (e.g., "14" for the Evidence Study Guide). You will receive a list of file names and descriptions. Jot down the names of those you wish to download.

Telling the EBB that you wish to download a file

To tell the EBB that you wish to download a file from either the files listing or the main menu, type "D" (again, without the quotes). You will be presented with this list of download protocols:

(Z) Zmodem Batch	(P) Zmodem Batch (PCP)
(R) Zmodem Resume Aborted D/L	(Y) Ymodem Batch
(O) Xmodem-1K (Old Ymodem)	(C) Slow Xmodem/CRC
(F) Qmodem-1K-G (Full flow)	(G) Ymodem-G
(M) MobyTurbo Zmodem	

Use the Zmodem Batch (Z) if you have it. If not, use Xmodem-1K (Old Ymodem) (O). If you get funny characters (line noise) when using this protocol, use Slow Xmodem/ CRC (C) instead.

After you select the protocol, you will be asked for the file name. After you type it, the EBB software will find the file and indicate that it is ready to send it.

Telling your communications program to commence the download

At this point, you must tell your communications package to start receiving the file. In most communications packages, you merely have to hit the PgDn key, select the same protocol as you told the EBB you were using, and give the receiving file a file name on your computer (e.g., A:\FILENAME.ZIP). **Note: The EBB gives you about 20 seconds to start the download or it will assume that something is wrong and abort the process.** Repeat the second and third steps to download additional files.

LOCAL DIRECTORY

(Write in name and phone number of personnel in your local area)

NAVY LEGAL SERVICE OFFICE (NLSO) / TRIAL SERVICE OFFICE (TSO):

- CO / OIC:

- Command Service Officer:

(Assist all commands without permanent Staff Judge Advocates assigned)

- Trial Counsel:

(Represents government (Prosecution) in Courts-Martials)

- Defense Counsel:

(Represents members under investigation or facing disciplinary action)

- Legal Assistance Attorney:

(Assists members and dependents with personal legal matters i.e. wills)

Local Staff Judge Advocate:

(Area coordinator & Flag JAGS are ethics advisors)

ISIC JAG or first JAG in chain of command:

Others:

CAAC:

(Assist area commands with Alcohol / Drug incidents)

Equal Opportunity Officers:

(Assist with discrimination complaints / sexual harassment / fraternization)

Family Advocacy Representative (FAR):

(Assist area commands with domestic violence and child abuse incidents)

Naval Criminal Investigative Service:

- Senior Agent In Charge (SAC):

- Special Agent: